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06-78

RENTAL FAIRNESS ACT OF 1999

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HEARING BEFORE THE SUBCOMMITTEE ON FINANCE AND HAZARDOUS MATERIALS OF THE COMMITTEE ON COMMERCE HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

H.R. 1954

OCTOBER 20, 1999

Serial No. 106-78

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(III)

THE RENTAL FAIRNESS ACT OF 1999

WEDNESDAY, OCTOBER 20, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON FINANCE AND HAZARDOUS MATERIALS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322, Rayburn House Office Building, Hon. Michael G. Oxley (chairman) presiding.

Members present: Representatives Oxley, Cox, Largent, Shimkus, Wilson, Shadegg, Towns, Deutsch, Stupak, and Luther.

Also present: Representative Bryant.

Staff present: Robert Gordon, majority counsel; Robert Simison, legislative clerk; and Bruce Gwinn, minority professional staff member.

Mr. OXLEY. The subcommittee will come to order. I would like to thank our panel of witnesses for joining us today to discuss reforming vicarious liability laws. We are fortunate to have before us Ms. Sharon Faulkner, who owned and operated an independent car rental company in upstate New York for 17 years. Ms. Faulkner will also tell us firsthand how vicarious liability impacted her small business.

Mr. Raymond Wagner gives us a triple perspective. He is not only the vice president of Enterprise, but a municipal circuit court judge and adjunct law professor as well.

Mr. Stewart, the former president of the Association of Trial Lawyers of America, got stuck in bad weather in Florida, so he is being replaced by ATLA's current president Mr. Richard Middleton.

Thank you all for joining us today.

The legislation before us today H.R. 1954, introduced by Mr. Bryant, would accomplish two simple things. First, it creates a legal presumption that car rental employees are not required to obtain State insurance licenses when providing short-term coverage in connection with a vehicle. Class action lawsuits have been threatened in several States which do not have express laws governing this issue. The provision of H.R. 1954 only applies where a State has not acted on the issue and only lasts for 3 years as a sort of grace period to encourage each side to work toward resolving the issue.

I would note that this subtitle was adopted by unanimous consent in the ongoing conference on financial services reform.

Second, the bill states that no person engaged in the business of renting or leasing a motor vehicle shall be liable to a claimant for the tortious act of another solely by reason of being an owner of

such motor vehicle. In other words, if Mrs. Faulkner rents somebody a car, and they go off and crash into somebody, this bill says that the person who is at fault and caused the car crash should be liable for the damages, not Mrs. Faulkner. It seems to make sense to me, and I went to law school.

This sounds like a simple concept. In fact, 44 States have rejected vicarious liability as unfair and unjust. Unfortunately, if Mr. Wagner rents a car to a Red Sox fan in Massachusetts, for example Mr. Markey, which has rejected vicarious liability, and the driver gets so upset about the Sox's latest playoff loss that he hits a driver from New York, inadvertently of course, then the courts may end up applying unlimited liability under New York law for all damages against Mr. Wagner even though he was in no way at fault for the accident, did not rent a car in New York.

I don't think we want to force car rental companies to ask prospective renters whether or not they are Red Sox fans and if they plan on attending any baseball games in New York. All this subtitle does is to say that the party at fault should be responsible for the damages. If you don't do anything wrong, you shouldn't be forced to pay for the wrongdoing of others. This bill does not in any way preempt State insurance laws or the ability of the States to impose minimum responsibility requirements on rental companies.

It also does not in any way limit the liability if the agency is in any way or in any respect negligent. For example, if Enterprise failed to maintain a car or rented a car to an obviously drunk individual, then they would still be liable for the resulting harm, but this bill does establish a simple rule of fairness. Liability should be based on fault. If we continue to let the trial lawyers go after innocent small business owners like Mrs. Faulkner, we will end up with less competition, higher prices, and only a few megacompanies left who can afford the insurance premiums and legal cost of the constant lawsuits.

Last term I was proud when this committee enacted the biomaterials bill on a bipartisan basis, protecting medical implant suppliers from excessive and frivolous litigation. We said that a company shouldn't be dragged into lawsuits merely for supplying component parts. Previous term we sent to the President a bipartisan product liability bill which contained a much broader vicarious liability repeal. This bill is another small step forward toward fairness and sanity in our legal system.

I am pleased to cosponsor the reform legislation by our good friend from Tennessee Mr. Bryant. I look forward to hearing further thoughts on this legislation from our panel of witnesses.

Let me now yield to the gentleman from Minnesota for an opening statement should he so desire.

Mr. LUTHER. Thank you, Mr. Chairman. I look forward to the testimony. Obviously there are reasons why these vicarious liability—why vicarious liability laws are in place in this country, and I am looking forward to hearing testimony on the issue of why we should have a Federal standard here. In other words, as I understand it, the State laws, there are a variety of State laws on this issue. We generally allow State laws to control in this area. So I will look forward to hearing the testimony on the issue of why we should be passing Federal legislation on this particular issue.

I know that, for example, in Minnesota, the State that I come from, we do have a law that affects this particular subject in that State, and generally speaking, I think this comes within the jurisdiction of State law, what we generally view here as coming within the jurisdiction of State law.

Also, I will be interested in hearing testimony on why we should single out this particular industry compared to all of the other areas of law where there is vicarious liability and where the burden and responsibility for that is borne by the business community and by others. And so I appreciate, very much appreciate, the hearing and looking forward to hearing the testimony on some of those key issues. Thank you.

Mr. OXLEY. I thank the gentleman. Now I recognize the gentleman from Tennessee, the aforementioned gentleman from Tennessee, who is a sponsor of the bill and not technically a member of the subcommittee, but a member of the full committee. We are proud to have him with us this morning, and I now recognize him for an opening statement.

Mr. BRYANT. Thank you, Mr. Chairman. I do appreciate your holding this hearing today. I want to thank you for allowing me to participate. From the beginning of my service in the House in 1995, I have been a strong proponent of fair and reasonable tort reform. Having participated in this type of debate for nearly 6 years, I am well aware of the arguments from those who might disagree with me on the need for broad legal reform. The bill I have introduced and which we are discussing today, however, is a common-sense piece of legislation which I think both sides of the legal reform debate should be able to support and hope will support.

Currently companies that rent or lease motor vehicles such as car and truck rental firms are subject in five States and the District of Columbia to unlimited liability for tortious acts of their renters and lessees even if the rental car company is not negligent and there is no defect in the motor vehicle. In these select States a rental company will be held vicariously liable for the injuries and damages caused by the negligence of its customers simply because the rental company owns the motor vehicle and has given permission of its use by the customer.

With your indulgence, Mr. Chairman, I would like to relate to members of the subcommittee some of the more outrageous examples of how unfair vicarious liability can be. Budget Rental Car rented a vehicle to a woman in New York. The woman allowed her son, an unauthorized driver under the rental agreement, to drive the vehicle even though he had a suspended New York driver's license. The son lost control of the car. His mother, who was a passenger at the time of the accident, suffered injuries. The mother sued her son for negligence, and the jury found Budget vicariously liable for the son's negligence under New York State law. The jury returned a verdict of \$450,000 against Budget.

In another example four British sailors rented a car from Alamo in Florida. The driver fell asleep at the wheel. The car ended up in a canal, and only one passenger survived. Alamo was found vicariously liable for the deaths and injuries solely to the fact that it owned the vehicle. No negligence for the accident was attributed

to Alamo. Alamo was ordered by a jury to pay plaintiffs \$7.7 million.

Mr. Chairman, there are many other examples similar to this where the rental company is held liable even though it had not been negligent in any way and the vehicle was operated perfectly or the vehicle operated perfectly. My legislation would preempt the laws of these States which impose unlimited vicarious liability on companies that rent or lease motor vehicles.

Again, this bill is a common-sense, targeted solution. This bill would not exempt rental companies from liability if the company is negligent. It would not exempt the company from minimum financial responsibility laws for vehicle owners in each State. For example, if a car rental company does not maintain a car properly, and the brakes on the car fail, then the rental car company would be liable for its negligence. This bill would also not foreclose other avenues of tort liability for third parties injured by the customers of rental companies.

Mr. Chairman, the vicarious liability system acts as a hidden tax on all rental customers nationwide. Rates go up, companies refuse to do business in vicarious jurisdictions, and the competition is stifled. It is time for the Congress to take action to institute reform in this area of the law. I look forward to working with you and other members of this subcommittee to move this legislation, and, again, I thank you for giving this issue the hearing it deserves and for allowing me to participate. Thank you.

Mr. OXLEY. The gentleman's time has expired.

The gentleman from Florida, Mr. Deutsch.

Mr. DEUTSCH. No, thank you.

Mr. OXLEY. How about the gentleman from the Upper Peninsula? Does he have an opening statement?

Mr. STUPAK. Yes, Mr. Chairman. This legislation would preempt current laws in five States. While I understand the reason why the rental car industry wants to change these laws, I believe we are in the wrong forum here. Tort law has long been the province of State legislatures. The State legislatures in Connecticut, District of Columbia, Iowa, Maine, New York, and Rhode Island have decided that rental car companies should be vicariously liable in the case of an accident. Now, my friend from the other side says this is a hidden tax, but we don't serve in those State legislatures. I don't know why they made those choices, but I do know the State capitals are the place where the decision should be made and not here in Washington, DC, and if those States and residents feel it is a tax, then that is their responsibility and not ours. I believe if the rental car companies feel the residents in these States pay more for auto rentals because of vicarious liability, then they should go there and try to convince those States to elect representatives that will change the laws.

Proponents of the bill argue that rental cars are products that exist in interstate commerce and therefore justify uniform liability standards, but the simple fact is nearly all items involved in lawsuits travel in interstate commerce. In my view, rental cars should not be held to a different standard than any other product.

I point out to my fellow Republican colleagues that support of Federalizing the tort laws in these States is wholly inconsistent

with the majority party's stated desire to return the power to the States. This bill will remove these decisions from the State legislatures and bring them to Capitol Hill. Forty-five States, all the territories have addressed this issue. I don't think we should come here for five States.

Mr. Chairman, I understand why the rental car companies are lobbying for this bill. I don't fault them in doing so. However, I disagree that we should be in the business—we should not be in the business of preempting State tort law. Thanks, Mr. Chairman.

Mr. OXLEY. I thank the gentleman.

The gentleman from Oklahoma Mr. Largent.

Mr. LARGENT. Thank you, Mr. Chairman.

We have all heard of oxymorons like jumbo shrimp and hot water heater and why we park on a driveway and drive on a parkway. Today we are going to learn about a legal oxymoron, which is called vicarious liability. I am pleased to offer my strong support for H.R. 1954, the Rental Fairness Act of 1999. I am an original cosponsor of this important legislation. I commend you, Mr. Chairman, for your leadership in calling this hearing.

I am supportive of the underlying theme of H.R. 1954. A person should not be held liable for accidents which they were not at fault. This theme is a fundamental construct of our Nation's liability system. This construct must be upheld if dozens are to have faith in the fairness of our judicial system. Holding motor vehicle rental companies liable for the negligence of their customers when there is nothing they could do to prevent this negligence is unfair. So-called vicarious liability laws for motor vehicle rental companies, although present in a small minority of jurisdictions, impact on car rental customers across the Nation, including the citizens of my State of Oklahoma. These laws drive up rental rates, reduce competition and act as a barrier to interstate commerce.

Vicarious liability reform legislation was approved by this committee and the full House in 1995. These reforms are long overdue, and I look forward to working with the chairman of this subcommittee and the chairman of the full committee to move this legislation this year. Thanks for the opportunity to present this opening statement. I look forward to the hearing the testimony of our panel of witnesses today. Thank you, Mr. Chairman.

Mr. OXLEY. I thank the gentleman.

The gentlelady from New Mexico.

Mrs. WILSON. No, Mr. Chairman.

Mr. OXLEY. I guess we completed the opening statements.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Thank you Mr. Chairman.

I congratulate my friend from Tennessee, Mr. Bryant, for his work in moving this issue forward.

The Commerce Committee has a long history of working together to enact bipartisan product liability reform. Vicarious liability reform was included in the product liability bill this Committee sent to the President in the 104th Congress, as well as a Gorton-Rockefeller reform bill last term that the President supported, but which ultimately failed in the Senate on other grounds.

Vicarious liability is the theory that you can sue the person with the most money, even if they have no fault for the harm.

In my home state of Virginia, a large percentage of rental cars are driven into the District. If one of these renters decides to give the car keys to a total stranger who gets drunk and crashes the car into the Washington Monument, then under the DC vicarious liability laws, the trial lawyers can go after the rental company for the bill.

This is wrong! Why should we subject anyone to unlimited liability without any fault or responsibility, where the accident was completely caused by the negligence of a third party?

Responsibility and liability should be placed on the party at fault. Forty-four states have recognized this and have repealed their vicarious liability laws. But they can't protect their citizens from being sued in the other six states without this legislation.

H.R. 1954 establishes the simple rule that liability should be based on fault, not deep pockets to be picked by the trial lawyers.

The legislation by Mr. Bryant is timely, necessary, and a fine addition to this Committee's long-standing efforts on liability reform.

I thank the gentleman from Ohio for holding this hearing and look forward to hearing further testimony from our witnesses.

Mr. OXLEY. Let me now turn to our panel, and, Ms. Faulkner, we will begin with you.

STATEMENTS OF SHARON FAULKNER, AREA MANAGER, PREMIER CAR RENTAL CORPORATION; RAYMOND T. WAGNER, JR., VICE PRESIDENT, ENTERPRISE RENT-A-CAR CORPORATION; AND RICHARD H. MIDDLETON, JR., PRESIDENT, ASSOCIATION OF TRIAL LAWYERS OF AMERICA

Ms. FAULKNER. Good morning, Mr. Chairman and members of the committee. My name is Sharon Faulkner, and I am the area manager for Premier Car Rental Company in Albany, New York. Premier is a subsidiary of Budget Rent A Car Corporation. Thank you for inviting me to appear at this hearing today. My testimony is in support of H.R. 1954, the Rental Fairness Act of 1999. I thank Congressman Bryant for introducing this important legislation. In addition, I thank you, Mr. Chairman, for your support of this.

Let me tell you about my own personal experience, which I hope will help the members of this committee understand the importance of this bill. For 17 years, until 1997, I was a small business owner operating an independent car rental company in upstate New York. The company, Capitaland Rental Car, was headquartered in Albany, New York. During those years, thanks to the hard work of my employees and the loyalty of our local customers, my company survived two recessions and fierce competition.

That situation changed 1 day in 1997 when I was notified that I and my company were being sued for an accident involving one of our rental cars that occurred over a year previously. Capitaland rented a car in 1996 to a female customer who possessed a valid New York driver's license. As part of Capitaland's standard rental agreement, the customer agreed she would be the only driver of the car. Our customer then loaned the car to her son, an unauthorized driver under the rental agreement. The renter's son, without her knowledge, drove the car to New York City and was involved in an accident in which a pedestrian was struck in the crosswalk. The injured person sued our company for the son's negligence in causing the accident.

This lawsuit caught me completely by surprise, because when I checked our records, I found that the rental vehicle had been returned to us without any damage. As a result, I had no idea that

an accident had ever occurred or that a person had ever been injured. Nevertheless, Capitaland was named as a codefendant in a lawsuit which demanded enormous amounts of money to pay medical bills and compensate the injured person for his pain and suffering.

So you might wonder how is it that my company was sued for this accident. We rented to a licensed driver. The renter then loaned to an unauthorized driver. It was the unauthorized driver, a person neither I nor any of my employees ever met, that caused the accident that injured this pedestrian. We were not negligent in any way and could not have prevented the accident from occurring. Therefore, we should not have been liable. However, New York is one of a very small minority of States that hold the companies that rent motor vehicles liable for the negligence of persons driving their vehicles whether that person is the customer or not. In these States a car rental company can be assessed unlimited damages by a court under the legal doctrine of vicarious liability if one of its cars is involved in an accident in which the driver of the car was negligent. Simply because we own the car, New York law held my company liable for the negligence of our renter.

For me this lawsuit was the final straw. I am a mother with three children and Capitaland was our sole means of support. I found it incredible that I could lose everything I worked to achieve for 17 years because of an accident for which I was not at fault. In effect, every time I rented a car to a customer, I was putting my family's future on the line and all my employees' families' future on the line in the hope that the customer did not drive the car negligently and caused an accident. I made a decision to sell my company, the assets of which were purchased by a company that is now Budget Rent A Car. All of my employees were laid off, and another independent car rental company disappeared in New York.

My company is not alone. Capitaland is one of over 300 car rental companies that have closed in New York since 1990. Unlimited vicarious liability for a car rental company exists in five States: Connecticut, Iowa, Maine, New York, and Rhode Island, and the District of Columbia.

Vicarious liability for companies that rent or lease motor vehicles is unfair and contrary to one of our Nation's fundamental pillars of justice, that a person should be held liable only for harm that he or she causes or could have prevented. In the car rental industry vicarious liability increases rates for all of our customers, not just for customers in the small minority of States that adhere to this unfair and outmoded doctrine.

H.R. 1954 will put a stop to this legal lottery. This bill will preempt State vicarious liability laws that hold companies that rent or lease motor vehicles liable for the negligence of the renters or lessors. Specifically it prohibits a State from imposing liability on a company solely because the company owns the vehicle involved in an accident.

Let me take a minute to tell you what this bill will not do. This section will not shield the car rental company from its own negligence or for failing to maintain the car properly. This bill will not shield the car rental company from potential liability if it rents a

car to a person who is intoxicated and that person causes an accident. That is negligence. And this bill will not prevent any action based upon the negligence of the car rental company. In addition, it will not impact on the requirement that a car rental company insure their vehicles at the level required by State law.

I urge this committee to pass H.R. 1954 as quickly as possible. While it is too late to help my former company, it is not too late to put a stop to this legal lottery in the future. I will be happy to answer any questions.

[The prepared statement of Sharon Faulkner follows:]

PREPARED STATEMENT OF SHARON FAULKNER, AREA MANAGER, PREMIER CAR RENTAL COMPANY

Good morning, Mr. Chairman and members of the Committee. My name is Sharon Faulkner, and I am the regional manager for Premier Car Rental Company in Albany, New York. Premier is a subsidiary of Budget Rent A Car Corporation.

Thank you for inviting me to appear at this hearing today. My testimony is in support of H.R. 1954, the "Rental Fairness Act of 1999." I thank Congressman Bryant for introducing this important legislation and you, Mr. Chairman, for being an original co-sponsor of the bill. I urge this Committee to approve this bill in the near future.

Let me be very clear about what this bill would and would not do. This bill would right a wrong by adopting a uniform federal standard that would not hold motor vehicle rental companies liable for damages when the companies in no way caused an accident. The bill would not, however, eliminate the liability of the companies when they are negligent or failed to maintain the vehicle properly.

Let me relay my personal experience to you, which I hope will help the Members of this Committee understand the importance of this bill. For 17 years, until 1997, I was a small business owner, operating an independent car rental company in upstate New York. The company, Capitaland Car Rental, Inc., was headquartered in Albany. During those years, thanks to the hard work of my employees and the loyalty of our local customers, my company survived two recessions and fierce competition from the larger, nationwide car rental companies.

That situation changed one day in 1997, when I was notified that I and my company were being sued for an accident involving one of our rental cars that had occurred over a year previously. Capitaland had rented a car in 1996 to a female customer who possessed a valid New York driver's license. As part of Capitaland's standard rental agreement, the customer agreed that she would be the only driver of the car. Our customer then loaned the car to her son, an unauthorized driver under the rental agreement. Our renter's son, without her knowledge, drove the car to New York City and was involved in an accident in which a pedestrian was struck in the crosswalk. The injured person sued our customer's son for his negligence in causing the accident.

This lawsuit caught me completely by surprise, because, when I checked our records, I found that the rental vehicle had been returned to Capitaland without any damage. As a result, I had no idea that an accident had occurred or that a person had been injured.

Nevertheless, Capitaland was named as a co-defendant in the lawsuit, which demanded enormous amounts of money to pay medical bills and compensate the injured person for his pain and suffering.

You might wonder how it is that my company was sued for this accident. We rented to a licensed driver. The renter then loaned the car to an unauthorized driver. It was the unauthorized driver—a person neither I or any of my employees had ever met—that caused the accident that injured this pedestrian. We were not negligent in any way and could not have prevented the accident from occurring. Thus, we should not have been liable.

However, New York is one of a very small minority of states that hold the companies that rent motor vehicles liable for the negligence of persons driving their vehicles—whether that person is a customer or not. In these states, a car rental company can be assessed unlimited damages by a court under the legal doctrine of "vicarious liability" if one of its cars is involved in an accident in which the driver of the car was negligent. Simply because we owned the car, New York law held my company liable for the negligence of our renter.

For me, this lawsuit was the final straw. I am a mother with three children and Capitaland was our sole means of support. I found it incredible that I could lose

everything I had worked to achieve for 17 years because of an accident for which I was not at fault. In effect, every time I rented a car to a customer, I was putting my family's future on the line in the hope that the customer did not drive the car negligently and cause an accident.

I made the decision to sell my company, the assets of which were purchased by a company that is now Budget Rent A Car. Budget assumed the liability for this lawsuit and, although I am deeply interested in knowing the result of this case, the plaintiff's lawyers insisted that the settlement of the lawsuit be sealed.

As a result of the sale of my company, all of my employees were laid off, and another independent car rental company disappeared in New York. And my company is not alone. Capitaland is one of over 300 car rental companies that have closed in New York since 1990.

Unlimited vicarious liability for car rental companies exists in five states (Connecticut, Iowa, Maine, New York, and Rhode Island) and the District of Columbia. One other state, Florida, has limited vicarious liability to a cap of \$900,000 per accident. Forty-four other states have either discarded unlimited vicarious liability or never adopted it in the first place.

Vicarious liability for companies that rent or lease motor vehicles is unfair and contrary to one of our nation's fundamental pillars of justice—that a person should be held liable only for harm that he or she causes or could have prevented. In the car rental industry, vicarious liability increases rates for all of our customers, not just for customers in the small minority of states that adhere to this unfair and out-moded doctrine.

Vicarious liability undermines competition in the car rental industry. As I have stated, hundreds of companies have disappeared from New York this decade—leaving the major, nationwide systems as the only car rental option for consumers in the state. In addition, many smaller, growing car rental companies will not do business in vicarious liability states and seek to prohibit their customers from driving into those states. And vicarious liability operates as a legal lottery, enabling trail lawyers to target the so-called “deep pockets” of car rental companies for huge judgments.

I can give you numerous other examples of this unjust and unfair legal doctrine. Single car accidents where the only person at fault was the driver. A car rented in Ohio and driven to New York where an accident occurred and New York's law was applied. Customers loaning their cars to a friend who loans it to a sibling who runs a stop sign and has an accident. All of these situations have resulted in car rental companies being sued and paying tens of millions of dollars in judgments—despite the fact that the car rental company was not negligent or at fault for the accident.

Together, these cases result in over \$100 million in judgments and settlements against car rental companies every year—costs that must be recovered by the companies through the rates they charge every rental customer. In effect, these judgments from this small minority of states results in a tax on all car rental customers everywhere, not just on the citizens of the vicarious liability states.

H.R. 1954 will put a stop to this legal lottery. This bill will pre-empt state vicarious liability laws that hold companies that rent or lease motor vehicles liable for the negligence of their renters or lessors. Specifically, it prohibits a state from imposing liability on a company solely because the company owns the vehicle involved in an accident.

Let me take a minute to tell you what H.R. 1954 will not do. It will not shield a car rental company from its own negligence or for failing to maintain the car properly. It will not shield a car rental company from potential liability if it rents a car to a person who is intoxicated and that person causes an accident. That is negligence, and this bill specifically states that it will not prevent any action based upon the negligence of the car rental company. In addition, it will not impact on the requirement that a car rental company insure their vehicles at the level required by state law.

Instead, this bill will prevent the situation I faced in 1997—being sued and forced to sell the company that I had worked so hard to make successful.

I urge this Committee to pass H.R. 1954, as quickly as possible. While it is too late to help my former company, it is not too late to put a stop to this legal lottery in the future.

I would be pleased to answer any questions that my testimony may have raised.

Mr. OXLEY. Thank you, Ms. Faulkner.

Mr. Wagner.

STATEMENT OF RAYMOND T. WAGNER, JR.

Mr. WAGNER. Good morning, Mr. Chairman, members of the committee. My name is Ray Wagner, and I am a vice president at Enterprise Rent-A-Car Company. Enterprise is a family owned corporation headquartered in St. Louis, Missouri. I appear before you on behalf of Enterprise to express our support for Congressman Bryant's Rental Fairness Act of 1999. Thank you, Mr. Chairman, for your strong support of this legislation and for inviting me to present testimony today.

My testimony today will center on Title II of H.R. 1954. Title I of this bill was attached as a noncontroversial amendment to H.R. 10 when that bill was considered by this committee earlier this year and, in fact, yesterday as well. It is my understanding that this amendment has been agreed to by the conference committee currently crafting the final financial services modernization bill. Thus, when H.R. 1954 is marked up by this committee, it will consist only of Title II of the bill.

I view the current vicarious liability laws from perhaps a unique perspective. Not only am I a vice president at Enterprise Rent-A-Car, but I am also a circuit judge in the municipal division of St. Louis County as well as an adjunct professor of Washington University School of Law. I am here today to say that the current vicarious liability laws are unfair and badly in need of reform.

The title of this legislation accurately describes its impact. H.R. 1954 will return the notion of fairness to litigation involving car rental companies and those handful of States which still cling to this unfair doctrine. It is simply not fair to subject car rental companies to unlimited liability for the acts of their renters, and yet that is exactly what the vicarious liability laws of Connecticut, Iowa, Maine, New York, Rhode Island and the District of Columbia impose. It is not fair to impose multimillion dollar judgments on any entity, whether an individual or a corporation, when they have done nothing wrong. It is not fair to force our customers across the Nation to pay higher car rental rates for this misguided and outdated vicarious liability laws, which, incidentally, date back to the days of horse and buggies, when the horse rental operator was presumed to know the personality of his horse.

The laws of these States force car rental companies to charge nonresident renters higher rates to cover their losses. In essence, nonresident accident-free renters are forced to subsidize accident-prone renters in vicarious liability States. I would submit that this is poor public policy. It is not fair to deprive consumers of the competition and lower rental rates that smaller operators can offer. But that is exactly what has happened because these laws have forced hundreds of companies out of business, as we just heard from Ms. Faulkner. And it is not fair that the only sure way an operator, even one operating under—outside of a vicarious liability State, can protect itself against such claims is to simply go out of business.

H.R. 1954 will return uniformity and fairness to the car rental industry and to our customers. Quite simply, it will preempt the law in the small minority of States which presently hold vehicle rental companies liable for the negligence of their customers merely because the company owns the vehicle involved in the accident.

Opponents of this legislation will raise three central arguments against it. First, they will argue that Congress should not preempt State laws as a matter of States rights and federalism. I would agree with this argument if the impact of these States' vicarious liability laws were confined to their borders and their citizens, but this is not the case. Our customers across the Nation pay for vicarious liability laws through higher rates. A company operating in Virginia cannot stop its vehicles from traveling to New York or the District of Columbia. And as the selection of cases attached to my testimony outlines, creative plaintiff lawyers seek to apply these States' vicarious liability laws no matter where the accident occurs.

Second, opponents will argue that the bill will somehow lower the standard of care companies will use in the future when renting their vehicles. They allege we will feel free to rent to drunk customers or to not maintain our vehicles because we will have no fear of liability. I believe that they know that these arguments are false. This bill expressly states that the bill will not impact claims alleging a company's negligence whether by negligently entrusting the car to a person or by failing to maintain the car. If Enterprise, for example, has been negligent in any way, H.R. 1954 does not shield the company from potential liability, nor should it. We have an obvious interest in protecting our cars, the tool of our trade, and we take all steps to do so.

Third, opponents of H.R. 1954 will argue that innocent injured persons will go uncompensated if these laws are not preserved. As a subset to this argument, opponents of this bill will assert that the car rental companies are in the best position to compensate these victims. It is indeed true that persons are injured every day in vehicle accidents and that financial resources through insurance or personal wealth are in many cases insufficient to compensate, but it is also true that our Nation's liability system is based upon fault. Compounding the wrong, the original accident, by adding another injustice holding the car rental company liable does not make the original wrong right.

My company has been subject to numerous vicarious judgments and settlements over the past 10 years. These judgments have cost Enterprise tens of millions of dollars, costs that we must simply pass along to our customers. Collectively vicarious liability results in losses well over \$200 million per year to this industry, exclusive of insurance costs and legal fees.

In sum, Mr. Chairman, H.R. 1954 will right an ongoing wrong. These laws impact interstate commerce through higher rental rates for all consumers. These laws lessen competition by acting as a barrier to enter into business, and these liability laws undermine the fundamental principle of our Nation's liability system that a person should pay for the harm caused only when he or she is at fault or could have prevented the harm in some way. Federal reform legislation is appropriate and long overdue.

I thank you for inviting me to present this testimony this morning, and I would be pleased to answer any questions that my testimony may have raised. Thank you.

[The prepared statement of Raymond T. Wagner, Jr. follows:]

PREPARED STATEMENT OF RAY WAGNER, VICE PRESIDENT, ENTERPRISE RENT-A-CAR COMPANY

Good morning, Mr. Chairman and Members of the Committee. My name is Ray Wagner and I am a Vice President at Enterprise Rent-A-Car Company. Enterprise is a family-owned corporation headquartered in St. Louis, Missouri. I appear before you on behalf of Enterprise to express our support for Congressman Bryant's "Rental Fairness Act of 1999" (H.R. 1954). Thank you, Mr. Chairman, for your strong support for this legislation and for inviting me to present testimony today.

My testimony today will center on Title II of H.R. 1954. Title I of this bill was attached as a non-controversial amendment to H.R. 10 when that bill was considered by this Committee earlier this year. It is my understanding that this amendment has been agreed to by the conference committee currently crafting the final financial services modernization bill. Thus, when H.R. 1954 is marked-up by this Committee, it will consist only of Title II of the bill. As a result, I will concentrate my remarks today on Title II, which reforms state vicarious liability laws for companies that rent or lease motor vehicles.

I view the current vicarious liability laws from perhaps a unique perspective. Not only am I a vice president at Enterprise, I am also a municipal circuit court judge in St. Louis County and an adjunct professor at the Washington University School of Law in St. Louis. And I am here to say that the current vicarious liability laws are unfair and badly in need of reform.

The title of the legislation under consideration today accurately describes the impact this bill will have when it is enacted. H.R. 1954 will return the notion of fairness to litigation involving car rental companies in a handful of states that still cling to the unfair doctrine of vicarious liability for companies that rent or lease motor vehicles.

It is not fair to subject car rental companies to unlimited liability for the acts of their renters. And yet that is exactly what the vicarious liability laws in the states of Connecticut, Iowa, Maine, New York, Rhode Island, and the District of Columbia impose on Enterprise and other companies.¹

It is not fair to impose multi-million dollar judgments on any entity, whether an individual or a corporation, when they have done nothing wrong. Again, that is exactly what the vicarious liability laws of these states do.

It is not fair to force car rental customers across the nation to pay through higher car rental rates for the misguided and outdated vicarious liability laws that exist in only a handful of states. But that is exactly what happens every day, as the laws of these states force car rental companies to charge renters outside of these states higher rates to cover their losses in these vicarious liability states.

It is not fair to deprive consumers the competition and lower rental rates that smaller car rental companies can offer. But that is what has happened because vicarious liability laws have forced many companies out of business.

And it is not fair that the only sure way a car rental company, even one operating outside of vicarious liability states, can protect itself against vicarious liability claims is to go out of business. But that is the only way that a car rental company can make sure it avoids such claims.

H.R. 1954 will return uniformity and fairness to the car rental industry and to the customers who rent our cars. Quite simply, it will pre-empt the laws in a small minority of states that hold companies that rent or lease motor vehicles liable for the negligence of their customers only because the company owns the vehicle involved in the accident.

Opponents of this legislation will raise several arguments as to why H.R. 1954 should not become law. I would like to respond to each argument in turn.

First, opponents will argue that Congress should not pre-empt state laws as a matter of states' rights and federalism. I would agree with this argument if the impact of these states' vicarious liability laws was confined to their borders and their citizens. But, this is not the case. The car rental industry is a fundamental part of our nation's interstate transportation network. Car rental customers across the nation pay for the vicarious liability losses incurred by car rental companies through higher rates. A car rental company operating in Virginia cannot stop its vehicles from traveling to New York or the District of Columbia. And, as the selection of cases attached to my testimony outlines, creative plaintiffs' lawyers will seek to

¹ Seven additional states (Arizona, California, Idaho, Michigan, Minnesota, Nebraska, and Nevada) impose limited vicarious liability that is tied to the state's minimum financial responsibility requirements. Thus, H.R. 1954 will have no impact on these seven states. After enactment, a car rental company will continue to be liable in these seven states (and, in fact, all states) up to the state's minimum insurance requirements. One state, Florida, has capped vicarious liability at \$850,000 per incident. H.R. 1954 will pre-empt Florida's vicarious liability cap.

apply one of these states' vicarious liability laws no matter where an accident occurs.

Second, opponents of H.R. 1954 will argue that the bill will somehow lower the standard of care car rental companies will use in the future in renting their vehicles. They allege that we will feel free to rent to drunk customers or to not maintain our vehicles in peak condition because we will have no fear of liability. These arguments are pure bunk and they know it. H.R. 1954 expressly states that the bill will not impact claims alleging a company's negligence, either by negligently entrusting the car to a person or by failing to maintain the car. If Enterprise, for example, has been negligent in any way, H.R. 1954 does not shield the company from potential liability for an accident. Nor should it.

Third, opponents of H.R. 1954 will argue that innocent, injured persons will go uncompensated if these states' vicarious liability laws are not preserved. As a subset to this argument, opponents of this bill assert that car rental companies are in the best position to compensate these victims. It is indeed true that persons are injured every day in motor vehicle accidents and that financial resources, either through insurance or personal wealth, are in many cases insufficient to compensate these persons. But it also is true that our nation's liability system is based on fault. If a person is not at fault for an accident, then he or she should not be held liable. Compounding a wrong—the original accident—by adding another injustice—holding the car rental company liable—does not make the original wrong right.

My company has been subject to numerous vicarious liability judgments and settlements over the past ten years. These vicarious liability judgments have cost Enterprise tens of millions of dollars—costs that we must pass through to our customers. Together, vicarious liability results in losses by car rental companies of over \$100 million every year, exclusive of insurance costs and legal fees.

In sum, Mr. Chairman, H.R. 1954 will right an ongoing wrong—holding a car rental company liable for the negligent actions of their renters. Vicarious liability impacts on interstate commerce through higher rental rates for all consumers, not just those in vicarious jurisdictions. Vicarious liability lessens competition in vicarious states by acting as a barrier to entry into business in the vicarious states. And vicarious liability undermines the fundamental principle of our nation's liability system—that a person should pay damages for harm caused only when he or she is at fault or could have prevented the harm in some way. Federal vicarious liability reform is appropriate and long overdue.

Thank you for inviting me to present this testimony today. I urge this Committee to pass this bill so that it can be enacted into law by the end of this year.

I would be pleased to answer any questions my testimony may have raised.

SELECTED EXAMPLES OF VICARIOUS LIABILITY CASES AGAINST CAR RENTAL COMPANIES

Settlements and judgments from vicarious liability claims against car rental companies cost the industry over \$100 million annually. Listed below are selected examples of cases involving vicarious liability and car rental companies.

Fu v. Fu, 733 A.2d 1133 (1999)

In 1993, two friends rented a car in New Jersey from Freedom River, Inc., a Philadelphia licensee of Budget Rent-A-Car Corporation. The rental agreement identified only the two renters as authorized drivers of the car. The car, while being driven by Defendant Hong Fu (the wife of one of the renters and an unauthorized driver under the rental contract), was involved in a single car accident in New York. Plaintiff Li Fu, the sister of the Defendant and the wife of the other renter, was seriously injured in the accident. An arbitrator applied New York law and found the defendant and Freedom River liable for \$3.75 million. This judgment was affirmed by the New Jersey Supreme Court.

Brown v. National Car Rental System, Inc., 707 So.2d 394 (1998)

A Georgia resident rented a car from the Georgia office of National. The car was registered in Florida. Renter, in violation of the rental agreement, loaned the car to a friend, also a Georgia resident, who drove the car to Florida. While the unauthorized driver was driving in Florida, he hit a car driven by the plaintiff, a Florida resident. The lawsuit was brought in Georgia, and yet Florida law was applied. On appeal, the court held that National was vicariously liable for plaintiff's injuries under Florida law. National settled the case for \$70,000.

Brown v. Welcome Corporation t/a Thrifty Car Rental, Docket No. 10779/96, Supreme Court of New York for the County of Westchester (1997)

Welcome Corporation, a Thrifty licensee, rented a car to Scott Freeman in Norfolk, Virginia. Freeman was the only authorized driver under the rental contract.

Freeman gave the car to an employee, Harrell Davis, to use for business. Frank Dibello, another employee of Freeman, took the car without the permission of either Freeman or Davis and drove it to New York, where he was involved in an accident with Plaintiff. Despite the tortured connection of this accident to Welcome, the company was found vicariously liable for the accident under New York law and settled the case for \$75,000 plus over \$100,000 in defense costs.

Larocca v. Budget Rent-A-Car Corporation, Docket No. 08632/95, Supreme Court of New York for the County of Suffolk (1995)

Budget rented a vehicle to Rosalba Larocca in New York. Larocca gave permission to her son, an unauthorized driver under the rental contract with a suspended New York driver's license, to drive the vehicle. The son lost control of the vehicle on the New Jersey turnpike in a one-car accident. Larocco was a passenger in the vehicle at the time of the accident and suffered injuries. Mother sued son for his negligence, and jury found Budget vicariously liable for the son's negligence under New York law. A jury returned a verdict of \$450,000 against Budget.

McNamara v. Thrifty Canada, Ltd, Civil Action No. 98-CV-507, U.S. District Court, N.D.N.Y. (1999).

Thrifty rented the car to renter in Toronto. Renter was involved in an accident in New York in which the plaintiff, the driver of another car, was injured. The police report on the accident indicated that the renter was driving too fast for the prevailing conditions and following too close. After a three day jury trial, Thrifty was held vicariously liable under New York law and ordered to pay \$1.1 million in damages to plaintiff.

Zafra v. National Car Rental, Inc., Docket No. 126728/95, Supreme Court of New York for the County of Westchester (1995).

In 1995, a 19-year-old, who was an unauthorized driver under the rental contract for a car rented in New York by her mother, was driving in Vermont. She turned around to tell her friends in the back seat to be quiet and the car veered off the road and rolled over. One of the passengers was injured and sued the driver and National. Despite the fact that the accident occurred in Vermont, New York law was applied. National settled the claim for \$985,000. Of particular interest, National was insured for \$1 million, but the insurance company denied the claim because the driver was underage, in violation of the insurance coverage. However, New York prohibits car rental companies from refusing to rent to anyone 18 years of age or older.

Clay et al. v. Alamo Rent-A-Car, Inc., 586 So.2d 394 (1991).

Four British sailors rented a car from Alamo in Fort Lauderdale to drive to Naples. While driving to Naples, the driver of the car fell asleep at the wheel. The car left the road and ended up in a canal. The driver and two passengers were killed; the fourth passenger was seriously injured. Alamo was found vicariously liable for the deaths and injuries due solely to the fact that it owned the vehicle. No negligence for the accident was attributed to Alamo. Alamo was ordered by a jury to pay the plaintiffs \$7.7 million. The jury award was affirmed on appeal.

Nichols v. Value Rent-A-Car, Inc., Case No. 92-20889(21), Circuit Court of the 17th Judicial Circuit in and for Broward County (1992).

In a single vehicle accident, the driver of a passenger van rented from Value lost control of the van after braking on a freeway to avoid a slower moving vehicle. The van rolled over and plaintiff Nichols, who was not wearing a seat belt, was thrown from the van. She sustained injuries to her hands and her head. At trial, Value was not found negligent for her injuries in any way, and yet the jury ordered Value to pay the plaintiff \$2.2 million for her injuries.

Rodrigues v. Dollar Rent A Car Systems, Inc., Case No. 94-10085 CA6, Circuit Court for the 11th Judicial Circuit in and for Dade County (1994).

Plaintiff was speeding in a Dollar rental car when another vehicle ran a stop sign, striking the rental car and causing it to overturn. The injured parties in the rental vehicle received \$800,000 payments from the insurance company that covered the other vehicle. Plaintiffs sued Dollar based on the negligence of the driver of the rental car (she admitted to speeding at the time of the accident). The jury awarded total damages of \$420,000 against Dollar based upon the negligence of the driver and Dollar's ownership of the vehicle.

Watson v. Budget Rent A Car Corporation, Case No. 91/055232, Orange County Circuit Court (1991).

Budget rented a van to a family in Florida. At the time of the accident, the mother of the family was driving the van. The mother lost control of the van in a single-vehicle accident. Her infant son (the plaintiff), who was not restrained in the van, was thrown from the van and suffered severe injuries. Based upon the infant's mother's negligence and Florida's vicarious liability doctrine, Budget settled the case for \$490,000.

Stein v. Thrifty Rent-A-Car, Inc., Case No. 298-6936-TS, Supreme Court of New York for the County of Suffolk (1986).

The renter of a Thrifty car ran a stop sign and collided with Stein's car. Stein was thrown from the vehicle and killed. Stein's estate sued Thrifty based upon New York's vicarious liability statute. At the original trial, the jury found that Stein's death was caused by her failure to wear a seat belt and awarded no damages. In 1992, a New York appellate court reversed the original jury verdict and ordered a new trial on the issue of damages alone. The second trial resulted in a \$1.25 million jury verdict against Thrifty.

Mr. OXLEY. Thank you, Mr. Wagner.
Mr. Middleton.

STATEMENT OF RICHARD H. MIDDLETON, JR.

Mr. MIDDLETON. Thank you, Mr. Chairman. I am pleased your allowing me to substitute for Mr. Stewart on such short notice. I come as president of the Association of Trial Lawyers of America, and I come and voice our strong opposition to this bill because one thing we don't need is anymore bald assertions that such buzzwords as interstate commerce or the impact upon consumers via so-called hidden tax is, in fact—is necessary to consider.

The idea of vicarious liability is basically a doctrine of law that is based upon the premise that the relationship of one party to another, as well as the relationship of those parties to the society within that particular State, drives a need to have some sort of liability. The policy underlying the imposition of vicarious liability is one indeed which the State legislators have considered in conjunction with their State insurance laws and how they are going to mandate coverage. They have decided that in these five States and partially in a few other States that legal accountability for actions caused by participation in the market is necessary by recognizing who is in the best position to identify the risk and then to assume any responsibility for what goes wrong.

All you have to do is look at the impact of the market on the market of these rental companies. It is in States where there are large tourists numbers where, because they put so many cars on the road, they impact the number and the likelihood of uninsured motorists who are going to end up in collisions, and it exacerbates that uninsured motorist problem because of the number of cars they put out there. Vicarious liability spreads the responsibility to those making money in the marketplace and by increasing the risk to the citizens of their particular States. It is peculiarly a matter of the State legislatures and not of Congress.

The risk is obvious. You have people getting in unfamiliar vehicles, particularly trucks. You have got no ties to ownership, so you have a lesser sense of responsibility, no respect for the vehicle involved, and they don't even require any other proof of ownership which would help with this problem. The benefits of the system, because vicarious liability is imposed partially in certain States, is

that they now rent to people who are under 25 years of age—excuse me, they do not rent to those individuals. They require credit cards, which studies have shown are synonymous with people who hold credit cards are more responsible. They also check driving records of individuals. If they added that anybody who didn't carry other insurance that would apply—would not be eligible to rent cars, we might be getting someplace. But all of these good safety-enhancing measures are a result of the fact that insurance companies are under requirement to police their customer base and are in the best position to do so. This bill also encourages the irresponsible lending of vehicles to others other than the owners.

Let me talk to you about something we haven't heard very briefly, and that is the economics of this industry. We talk about effective interstate commerce, but we don't hear anything with regards to the impact on the industry because it is transparent. In 1996, Auto Rental News, which is the publication for that industry, said that the industry made \$14.6 billion on their rental cars across this country. Of that there were only \$100 million in total collision coverage, which means that $\frac{7}{100}$ of a cent of every dollar of revenue accounts for all the collisions, and if only a portion of that includes vicarious liability, it is even less than that. So not only is it minimal, it is really microscopic. And that is why not one major rental car company has ever reported in their SEC filings that liability concerns had impacted their profits in any way, shape or form. So the rental car companies are telling their investors and they are telling the Federal regulators one thing, and they are coming before Congress and telling you all something else simply because it is single-industry, special-interest legislation.

Auto Rental News also said that States such as Florida that have had vicarious liability and have handled their problem legislatively on their own without the intrusion of the Federal Government have much cheaper rates than other States. In addition to that, Auto Rental News has revealed that the auto rental industry has decided that they are going to not pursue 40 percent of the claims which they could, in fact, pursue for third-party liability. They have made no effort to do so.

So let me in conclusion state this, Mr. Chairman. There is absolutely no proof of an impact on interstate commerce. There is absolutely no need to trample States rights, which I believe is a much larger—become a much larger oxymoron than any concept of vicarious liability which was carefully crafted in the laws of these various States. It is absolutely special interest-legislation, and it takes away carefully crafted safety incentives that State legislatures have felt necessary to implement in their particular States. Thank you, sir.

[The prepared statement of Richard H. Middleton, Jr. follows:]

PREPARED STATEMENT OF RICHARD H. MIDDLETON, JR., PRESIDENT, ASSOCIATION OF TRIAL LAWYERS OF AMERICA

Mr. Chairman and members of the Commerce Committee, my name is Richard Middleton, Jr., and I am a practicing attorney from Savannah, Georgia. I am a senior trial attorney in the firm of Middleton, Mathis, Adams & Tate, P.C., with offices in Atlanta and Savannah, Georgia. I also have the very high honor of serving presently as the President of the Association of Trial Lawyers of America (ATLA). Mr. Chairman, thank you for the opportunity to present ATLA's views in opposition to H.R. 1954, the "Rental Fairness Act."

The Association of Trial Lawyers of America opposes this bill for several reasons, including our long standing belief that people who have been injured should have a real opportunity to be compensated for that harm. Vicarious liability laws are one means to help ensure that is the case. This bill would abolish that principle in the several states which have applied it to car rental agencies. We are also concerned that Congress is once again seeking to limit the rights of the states to enact liability laws as they see fit. That this effort comes in the midst of other legislative initiatives to federalize all state class actions, create a federal statute of repose, federalize no-fault auto insurance, and alter long standing state laws on punitive damages and joint and several liability makes the situation all the more alarming in a Congress sworn to return power to the states.

The principle of vicarious liability—the legal doctrine that one entity may be held liable for the actions of another, based on their relationship to each other—is deeply rooted in anglo-saxon jurisprudence. Where state courts and legislatures have adopted this principle, they have done so not only to ensure that injured parties are compensated for the harm they have suffered, but also to spread the risks and costs of doing business across a broader community. These vicarious liability laws also encourage renters and lessors of cars, and other merchants, to monitor their products and services more carefully, thereby ensuring safer products in the marketplace. This bill chooses to protect a thriving car rental industry rather than preserve the long standing principle of vicarious liability. As such, this legislation not only derogates state prerogatives, but does so on behalf of special interests.

THE "RENTAL FAIRNESS ACT" IS ONLY FAIR TO THRIVING CAR RENTAL AGENCIES

Let's be clear. The "Rental Fairness Act" is only "fair" to the thriving car rental businesses. Many of these businesses had billions of dollars in revenues in the past few years. Surely, they do not need this legislation in order to flourish. They are merely trying to limit their financial liability so they may reap additional profits. But, for the individuals who are injured by drivers of rented or leased cars, including the drivers themselves, this bill would curtail possible avenues of recovery. When rental car drivers are injured or injure others, they may seek recovery from a number of possible defendants, including the rental agency and the manufacturer of the automobile. This is not unlike the situation that exists in most other industries, where the businesses are held vicariously liable for the acts of others. There is no rationale or moral basis to single out car rental companies for special immunities. That would not only be wrong but the wrong is compounded by the fact that there is no demonstrable need for such protection from Congress. The current system is working and there is no documented evidence to support a federal override of current state laws governing this area of tort law. Indeed, this proposed bill recognizes that states have the authority to impose financial responsibility laws on car rental businesses. Vicarious liability is in essence another form of financial responsibility. States that decide it is in their best interest or good public policy to impose such responsibility should not be prevented from doing so.

VICARIOUS LIABILITY LAWS WERE ESTABLISHED TO PROTECT THE INJURED AND TO ENSURE THE SAFEST POSSIBLE PRODUCTS ARE AVAILABLE IN THE UNITED STATES

The courts established the principle of vicarious liability primarily to ensure injured parties recover damages for the harm they have suffered. But vicarious liability laws serve the additional purposes of spreading the risks and costs of doing business throughout a broader community, and of encouraging the sellers or renters of products to monitor those products closely to ensure the safest products possible are available to American families.

This bill would gut this fundamental principle for one industry by prohibiting states from holding any car rental agency liable for the harm resulting from a driver's negligent operation of a rental of a rented or leased motor vehicle they own. Those states which have established vicarious liability laws for car rental agencies clearly believe there are strong policy reasons to hold these agencies responsible for any harm involving their vehicles. Holding businesses accountable via vicarious liability is one way of making sure that profit-making businesses shoulder the risks they create. It also ensures that innocent victims injured by the business's activities are compensated for their injuries, and it creates an incentive for businesses to decrease the amount of risk to which the larger community is exposed. Ultimately, this legislation would weaken car rental companies' responsibility to the community at large, and thereby reduce safety on the roads for all of us.

H.R. 1954 IS YET ANOTHER EXAMPLE OF CONGRESS SEEKING TO DICTATE STATE POLICIES

This bill is also another example of the federal government seeking to dictate how the states should behave. Currently, only 12 states, either through statute or common law, allow for the determination of vicarious liability in cases involving rented or leased cars, but virtually all states impose some form of financial responsibility on car rental businesses, although the precise terms may vary. Congress should allow those 12 states to continue with their ongoing policies and practices. Those states which have vicarious liability laws for car rental agencies recognize that car rental companies enjoy a profit-making enterprise within their borders that places potentially high-risk drivers on their roads.

These companies are putting people behind the wheel of unfamiliar cars, often in unfamiliar places. In addition, the people who rent the cars do not have pride of ownership in the vehicle; therefore, they may engage in behaviors that they would not normally do in their own car. States like California, Florida, and New York, which have large populations, large tourism industries and the largest rental car markets, have either enacted legislation or follow common law principles to make car rental companies vicariously liable. If a company wants to profit from renting cars in their states, thereby creating more potential risks and accidents, then they should help bear the cost of the risk they create.

New York embodies the rationale of why states hold car rental companies financially responsible via vicarious liability. The New York Court of Appeals noted that New York's vicarious liability legislation was designed to "ensure access by injured persons to a financially responsible insured person against whom to recover for injuries." The New York Law Revision Commission noted that the legislation was intended to regulate the conduct of automobile owners by "discourag[ing] owners from lending their vehicles to incompetent or irresponsible drivers."¹ California, Connecticut, Idaho, Iowa, Nevada, Maine, Michigan, Minnesota and Rhode Island have all codified vicarious liability statutes, in addition to the other jurisdictions that follow common law principles. These states have decided that vicarious liability is the best way to handle the risks created by car rental companies. Their judgment is prudent, sound, and should be respected.

For more than 200 years, civil liability under tort and contract law have been the sovereign domain of the states. Measures that would preempt our state-based liability system, like H.R.1954, are contrary to values expressed by lawmakers on both sides of the aisle. Particularly since 1995, I was under the impression that a central mission of the Congressional leadership was to work assiduously to give more authority back to the states. If that is correct, then I find it baffling, to say the least, that this Subcommittee is conducting a hearing on federal legislation which would clearly extinguish states' rights.

The agenda behind H.R. 1954 is unambiguous: the proponents of this legislation seek to unilaterally take power away from the states on an issue that historically has been left to the states, that is, the regulation of automobile liability. ATLA believes that extinguishing state liability laws that work to protect our families is a measure that is at best ill conceived, and at worst unconscionable.

WHY CAR RENTAL COMPANIES SHOULD BE HELD RESPONSIBLE VIA VICARIOUS LIABILITY

The policy rationale underlying vicarious liability for car rental companies is justified and effective. Car rental companies are the experts on their own businesses. Therefore, they are in a best position to anticipate the risks of renting cars to a variety of drivers and to plan for those risks. In addition, the major car agencies appear to be able to bear the consequences for the risks they create. According to the Auto Rental News 1997 Fact Book, there were 1.6 million rental cars in service at last count. Total revenues for all rental car companies reached \$14.6 billion in 1996, which was an 18.7 percent increase from 1985. Hertz's year end revenue was \$4.2 billion dollars last year. Avis had revenues of \$2.3 billion. Budget was at \$1.2 billion. Alamo generated \$201 million in revenue last year. According to the Wall Street Journal, profits for the top eight companies was \$245 million dollars in 1996.² Do not let these companies tell you they are facing egregious accident and litigation costs. The entire industry had only \$100 million in accident costs in 1996.³ To put this in perspective, their accident cost is .7 cents of a dollar, not even a penny of

¹ *Haggerty v. Cedeno* 653 A.2d 1166 (1995) (quoting the New York Law Revision Commission at 593 (1958))

² Lisa Miller, *Car Rental Companies are Jacking Up the Prices*, *Wall Street Journal*, Feb. 4, 1997 at B6.

³ *Auto Rental News*, Sept./Oct. 1996.

their revenue. Clearly, these car rental agencies are managing the risks they face in states with vicarious liability laws.

Yet, car rental companies are motivated to find the most cost effective methods in dealing with liability issues. In fact, their efficiency in dealing with liability issues has brought us to this Hearing Room today. After all, the most cost efficient way for these companies to deal with liability issues is to eliminate them altogether. But as a matter of fairness, car rental companies should not continue to profit from the business without being held responsible for accidents being caused by their lessees. Companies like Hertz, Avis, Alamo, and Budget, and countless other large and small profitable car rental concerns continue to impose risks on "individually random but collectively predictable victims of the activity,"⁴ namely the people injured by under-insured lessees.

Vicarious liability gives car rental companies incentives to conduct their businesses with the safety of others in mind. For example, they prevent drivers under the age of 25 years from renting their vehicles. They don't rent to customers without credit cards. They ask for your driver's license. They run a DMV check on your driving record. Prohibiting vicarious liability statutes would eliminate one of the remaining incentives car rental agencies have to continue to work toward decreasing the dangers they are imposing on the public at large. Do not let these companies walk away from their responsibilities.

There are numerous examples of how vicarious liability helps compensate innocent victims of accidents that involve rental cars, but I would like to leave you with just one. Two married couples rented a vehicle from Budget Rent-A-Car for a trip to Cornell University in Ithaca, New York. The rental contract named both couples as the parties allowed to drive the car. Unfortunately, there was an accident. One of the wives was driving when her view became distorted due to rain and fog. Due to her unfamiliarity with the vehicle, she could not find the windshield wiper. She lost control of the car, veered across two lanes of traffic, rolled over, and hit an embankment. The wife who was a passenger, a cardiologist, suffered a severe traumatic brain injury and will never remember her medical training or be independent again.⁵

Let me pose this question as my concluding remarks. Who is better positioned to cope with the risk? The wife who has suffered traumatic brain injuries because she happened to have the unfortunate luck of traveling in a rented car that was unfamiliar to the driver? Or Budget, who has to deal with the risk of accidents every day and who profits from putting drivers on the road every day? For those states with vicarious liability laws for auto rental agencies, we believe that system is more equitable and fair than the system H.R. 1954 would create. The Rental Fairness Act protects companies that profit from risk-creating activities at the expense of innocent victims. Do not let innocent victims go uncompensated to protect the thriving car rental industry.

Last Congress, as time was running out on the Second Session, these same rental car companies tried an end run around any real legislative scrutiny and attempted to have this same type of legislation buried in the massive Omnibus Appropriations bill. They were stopped dead in their tracks. Of course, that might not stop them from making a second try in the next few weeks.

Nevertheless, today, at least, the sunlight of public scrutiny is being directed on this special interest legislation that would gut state rights and potentially expose our communities to more reckless behavior on the roads. Mr. Chairman, I very much appreciate having the opportunity to discuss the nature of this legislation and why it should be strongly opposed. Thank you.

Mr. OXLEY. Thank you, Mr. Middleton.

Let me begin with some questions. Mr. Middleton, what if a State like New York were to entertain repealing the vicarious liability statute? Would you go to New York and lobby for that repeal?

Mr. MIDDLETON. As a matter of State policy, I don't think—I think that is up to the States.

Mr. OXLEY. What would the trial bar do? What position would the trial bar take?

⁴ Harry J. Steiner, *Moral Argument and Social Vision in the Courts* 71 (1987).

⁵ *Su v. Hong Fu and Freedom River d/b/a Budget Rent-a Car*, 733 A.2d 1133 (NJ 1999).

Mr. MIDDLETON. I can't speak for the New York Trial Lawyers Association. I would imagine they would have viable arguments to not repeal it. New York is one of the largest tourist States. They have seen the need to implement this type of liability because of the risk involved to their citizenry by having so many other rental cars on the road and by spreading it to those who can recognize the risk and account for it. I believe that is the whole reason that all of these car companies have independent insurance policies to cover such risk anyway.

Mr. OXLEY. So the basic theory behind vicarious liability is essentially the old deep pockets theory that goes back in case law; is that correct?

Mr. MIDDLETON. That is not correct. The theory of vicarious liability as it has been crafted State by State throughout this country in various ways is that because of the relationship of the parties to each other, one should be held vicariously responsible because of the nature of that relationship and because of the impact on the other citizens of that particular State by the market activity that is taking place.

Mr. OXLEY. How far would you take it? Let's say I was going to go to a Halloween party, and I was dressed as an umpire, and I got attacked by some irate Boston Red Sox fan. Should the company that supplied me with the costume be vicariously liable for the injuries I received?

Mr. MIDDLETON. I don't think that is what we are talking about here. The transparency of the argument on this bill is all about supposedly an impact on interstate commerce in only five States—

Mr. OXLEY. How do I protect myself from paying higher rates for rental cars, which I do quite often in Ohio because the rental car companies, Enterprise and Hertz and Avis and everybody else, are paying these vicarious liability claims in New York, Maine, and other States, which directly impacts the ability of me to rent a car in Ohio, at least the cost of it. How do I protect myself from that?

Mr. MIDDLETON. Well, I don't know how you protect yourself from $\frac{7}{100}$ of 1 cent of all the costs incurred of all of the profits that these companies have brought in for themselves. The problem that we have here is that the States where they have large populations in certain States such as New York, certain States such as Florida—and Florida said they had a problem, so they addressed it, as the State properly should have if that was a concern of that State. The truth of the matter is certain of these States have much lower rental rates than States that do not have vicarious liability. The reason is they try—States like New York and Florida try to appeal to the leisure time market, the family that walks up and rents a car only once as opposed to the business market where they have to deal with corporate discount rates. So they utilize these lesser rates in some of these big States, and it has no bearing whatsoever on the amount of collisions that they are sustaining or the amount of vicarious liability.

The truth is if you look at vicarious liability, and we heard from Capitaland, there is a company that had one lawsuit. We didn't what the result of that lawsuit was, and yet we know from a reported case that Ms. Faulkner's company had every right to go

to court and seek damages which were summarily dismissed from one of their renters when it behooved them to. So it seems like we have an argument here where they don't want to be able to go to court when they may have some responsibility for their actions according to that State legislature, but they love the court system when they can go after somebody for in this case something that was statutorily not even allowed.

Mr. OXLEY. I got rear-ended yesterday coming into the office, and the guy that hit me—let's say I was driving a rental car in the District of Columbia. And I was driving a rental car, and I get rear-ended by this guy who lives in Virginia. He is clearly at fault, and you are saying that the rental car company in that case should be vicariously liable for that accident caused by this guy that didn't stop in time?

Mr. MIDDLETON. You don't necessarily have the situation where the District of Columbia has to spread—seen the need to spread the risk because you have the claim since you were rear-ended against the driver of that car, and if you have other insurance, which I am sure you do, Mr. Chairman, you would—in fact, if that was an uninsured vehicle that rear-ended you, your own insurance uninsured motorist coverage or—

Mr. OXLEY. Why should I have to pay extra premiums for my insurance to protect me against somebody who is going to end up—who is liable, clearly liable and at fault? Why should I have to pay that kind of money—do you believe in the fault system?

Mr. MIDDLETON. I do believe in the fault system. I also believe in the balancing of if you increase the risk in a certain jurisdiction, and the legislature has decided that as a result of that, that you should undertake part of the responsibility for harm that is caused as a result of participating in that market, then if that is what the legislature says, that is exactly how it must be adhered to.

Mr. OXLEY. The law is imposed essentially on an out-of-State driver, not in the driver's own jurisdiction or where he lives?

Mr. MIDDLETON. If you ask about the fact whether any individual should pay, there is absolutely no proof that is put forth—been put forth in this hearing or anywhere else of any increase in premiums whatsoever as a result of the practice in only five of the 50 States plus the District of Columbia.

Mr. OXLEY. Why do you think that only five States and the District of Columbia have vicarious liability laws and 44—45 do not?

Mr. MIDDLETON. I don't know, but I certainly feel the need to honor those States that looked at this—

Mr. OXLEY. My time has expired. Let me introduce—recognize the gentleman from New York, ranking member.

Mr. TOWNS. Thank you very much, Mr. Chairman. Also I would like to ask my opening statement be placed in the record.

Mr. OXLEY. Without objection all opening statements will be made part of the record.

Mr. TOWNS. Let me begin with you, Mr. Wagner. The laws of how many States would not be affected by the provision of H.R. 1954?

Mr. WAGNER. Forty-five States, Mr. Chairman. The laws of five different States would be preempted by this bill as well as the District of Columbia.

Mr. TOWNS. So this law is actually—five States; is that correct?

Mr. WAGNER. Yes, sir, for unlimited vicarious liability. Let me be clear on that because there are various other States that are not going to be impacted by this bill necessarily, but do have some capped amount of vicarious liability. If you are looking at some notes, I wanted to be clear about that.

Mr. TOWNS. Why do you think it is important for the Congress to act on legislation that will have such a limited and narrow kind of impact?

Mr. WAGNER. Congressman, this issue of vicarious liability affects the rental industry throughout the country. As I stated in my remarks, renters do not just rent from within the vicarious liability States. The damage is not contained to those State borders. In fact, when somebody, for example, rents in Virginia, they cross interstate lines. They cross into the District of Columbia. They cross into New York and Florida and so on, places like that.

So this is an issue that does have national ramifications and one which is—amounts to over \$200 million per year for this industry and has put literally hundreds of small operators out of business in States such as New York and other States across the country.

A few moments ago the question was raised by the chairman about how the Trial Lawyers Association of New York respond to any effort in the State of New York, and the comment was made that perhaps we should take these fights back to the State capitals and deal with them there. I would submit that this is precisely the type of issue which should come before Congress for the simple reason that the legislators in the State of New York, they are not going to be attentive, responsive to a resident of the State of Virginia who petitions New York Legislature, and for that reason that points to the fact that it is an issue of interstate commerce, an issue of competition, an issue of fairness fundamentally and lower rates and price competition.

Mr. TOWNS. What have you actually done in terms of these five States to change their liability laws or practices; what have you done in this regard? It would seem to me some effort should be made to just get that to happen first.

Mr. WAGNER. Congressman, I would agree with you. In fact, the industry has taken steps to address these issues in the various State capitols. In fact, last year we aggressively mounted an effort in the State of Florida and were successful in the context of the overall tort reform bill that was signed by Governor Bush and including a provision which would cap to some degree the vicarious liability damages. It was a very worthy effort on the part of the industry, and it was well thought out and well discussed.

Unfortunately, tort reform laws across the country have almost uniformly been set aside and struck down for various constitutional reasons, and some of the rationale of those decisions striking down those tort reform laws is that this is a matter for the Congress. It is a matter of interstate commerce, a matter of constitutional law that should be dealt with by the Congress. And so while we are maintaining an effort at the State level, for example, in Florida, and we have also undertaken an effort in the State of New York and the other States as well, we frankly do not have the success, and if we do have the success at the State capitols, we are not sure that that law will withstand the scrutiny of the State court.

Mr. Middleton also commented a while ago—this is a little bit maybe related to your question as well about the various steps that we take within the different States, vicarious liability States. He commented that we have certain age limitations. We don't rent to individuals below the age of 25, for example, which, by the way, is not necessarily the case. Some State laws address that, where we check drivers' licenses, et cetera. The simple fact is if this law passes, if this bill passes, those same—the same precautions are going to be in place for the simple reason that there are State insurance laws that will apply and still hold us accountable up to the State financial limits.

Mr. TOWNS. Mr. Chairman, would you allow Mr. Middleton to just respond? His name was called.

Mr. OXLEY. Of course.

Mr. MIDDLETON. Well, with regard—I heard the mention of constitutional arguments. I am very concerned, obviously, that the premise of federalism is being absolutely trampled by these single special-interest attempts to impact tort reform, but in addition to that, I wonder where the U.S. Supreme Court—it is true the State courts have talked about it, but it is because in those instances, State legislatures have violated the constitutional rights of their citizenry.

With regards to the U.S. Supreme Court, it is hard to imagine where they are going to go with the concept of federalism when they have now agreed to accept at least one appeal involving the Womens and Violence Act, which they say is an intrusion upon the rights of the States to implement certain of their own laws where they see fit in this particular area.

With regards to that and the fact that there was mention made there were five States only, if this was an issue that impacted a majority of the States, maybe then the argument would hold water that interstate commerce was being affected. But we have seen absolutely no arguments that with only 10 percent of the States involved, that there has been any impact whatsoever. Where are the figures, and why isn't there a study done to investigate not only that, but also the impact this would have in those various States on the insurance laws that they have implemented, because this does impact in a Federal way the insurance laws, and I daresay the proponents of this bill don't want to open the door to allow Federal regulation of the insurance industry, which has inherently been held within the States' purview.

Mr. OXLEY. The gentleman's time has expired.

Mr. TOWNS. Thank you, Mr. Chairman. I appreciate your generosity. Next year I want you to know when I am Chair, I will reciprocate.

Mr. OXLEY. Actually next year we will still be majority.

The gentleman from Oklahoma.

I am going to be here, so the members if they want can go over and vote and come back. I will just keep on going.

The gentleman from Oklahoma.

Mr. LARGENT. Mr. Middleton, I just had a couple of questions for you. I am looking at—first of all, I hear you quote this figure $\frac{7}{100}$ of 1 percent. Have you met Mrs. Faulkner down at the other end of the table ?

Mr. MIDDLETON. Actually I met her in a different committee on a different topic where I got to hear the same story and where a member——

Mr. LARGENT. It is a yes or no question.

Mr. MIDDLETON. Yes.

Mr. LARGENT. That is all I need. Yes or no. She is the $\frac{7}{100}$ of 1 percent that you are talking about, her company, her employees, and what this law did to her, take a look. She lost her company because of what we are trying to address right here. So, you know, you want to know the statistics, you want to see the numbers, look at the other end of the table. That is where they are. And companies just like hers are going through the same thing in States that this exists.

The question I want to ask you is do you not see the patently unfairness of what is taking place here? When I read things like this about Budget Rent A Car renting a car to Mrs. La Rocca, and then she gives the car to her son who has lost his license, and then he drives it across someplace else and has an accident, where is—what could the Budget Rent A Car do to prevent that from happening? What could they have done to prevent that from happening?

Mr. MIDDLETON. They couldn't probably do anything——

Mr. LARGENT. That is all I need.

Mr. MIDDLETON. Let me explain.

Mr. LARGENT. No, I don't want you to explain because what you said is right. They couldn't have done anything, and yet you want to hold them responsible, and they could not have done anything.

Mr. MIDDLETON. Hold them responsible, Mr. Congressman——

Mr. LARGENT. No, no. What I am saying is, when you come in here and give us some trial lawyer explanation of what vicarious liability is that is just so full of hogwash, I am laughing up here listening to your definition, and then come in here and try to defend what I believe is patently unfair, just on the face of it that anybody would try to defend that, it insults me. It insults me.

And when we see these things happening, I think it is right for Congress. And I don't think it is any stretch to talk about interstate commerce and what we are doing, not at all. We have stretched interstate commerce so thin that this one is not even close. This is a good example of what this Congress has done, and I just would say that it is fascinating to me to listen to the Trial Lawyers of America come in here and talk about States rights. That is laughable on its face, too.

With that, Mr. Chairman, I would just like to yield back my time.

Ms. FAULKNER. Mr. Largent and Chairman, I would just like to mention, because my name was mentioned by Mr. Middleton, and he did not look at me when you asked him to look at me, this case that he said that my company, myself, presented was presented in small claims court. It cost me less than \$45. I was asked to do it by the New York Vehicle Rental Association because we wanted to try and clear up a gray matter on an issue not related to vicarious. I was not in a financial position to ever sue for vicarious liability in court, but I could afford the \$45 for a small claims court deci-

sion, which does not really get upheld anywhere anyway. I just wanted to bring that to your attention.

Mr. OXLEY. The gentleman's time has expired.

The gentleman from California want to be recognized?

Mr. COX. Actually, I intend to vote so—I was just answering a page.

Mr. OXLEY. Okay. The Chair would try to—want to keep this going because I have got a meeting at 11:30 anyway.

Mr. COX. I don't have enough time to ask questions and vote.

Mr. OXLEY. You want to come back?

Mr. COX. I will be very brief. I wonder if I could ask Mr. Wagner if he has had a chance to look at H.R. 1954, which we are focused on in this hearing.

Mr. WAGNER. Yes, Congressman, I have.

Mr. COX. Enterprise has lawyers.

Mr. WAGNER. Yes, sir.

Mr. COX. Are you a lawyer?

Mr. WAGNER. Yes, I am.

Mr. COX. I am concerned about the way section 202 is drafted because it seems to me that even though we are all pretty clear on what we are trying to do, we are trying to erase vicarious liability in this particular context. When the language says, solely by reason of being an owner of such a motor vehicle, and when it says, one shan't be placed in a position of being an ultimate insurer, I mean, there are lots of ways to, if you are trying to twist the thing or distort it or whatever, to possibly draft your complaint around this.

I have taken a stab at something around the following lines. I wonder if you would just react to it. I think it means the same thing. No person engaged in the business of renting or leasing a motor vehicle shall be liable under the laws of any State or the United States for the tortious act of its rental customers or the occupants of its rental vehicles or any other driver, pedestrian, or person involved in a motor vehicle accident by reason of being an owner of a motor vehicle involved in such an accident.

Is that essentially the same thing that you understand this bill to be trying—

Mr. WAGNER. Congressman, I think it is essentially the same thing. What we were trying to do was to address the issue of ownership of the vehicle, the rental car company owning the vehicle, and that by definition being the hook by which vicarious liability would apply to the rental car company. And I do not disagree that it could be rewritten in other ways to accomplish the same result.

At the same time, what we were trying to do is preserve the States' abilities to come in and address rental car companies in the context of their insurance codes, their financial responsibility limitations. So I think that was the balance we were seeking, because we are not wanting to preempt State insurance codes. We believe that—and that, by the way, is the very thing that will protect consumers against, to ensure consumers receive the safety precautions that were earlier mentioned.

Mr. COX. I think I might even suggest appending at the end of what I just read the words, whether by reason of the doctrine of

vicarious liability or otherwise, to make sure, again, there is no question what we are trying to do here.

Do you happen to know, or maybe Mr. Middleton would know, what percentage of auto accident cases that are filed in courts in the United States actually go to trial?

Mr. MIDDLETON. I can only estimate based on other things, statistics I have seen, Congressman, that actual trials consume less than 5 percent of all the civil cases brought in this country, but there is another statistic in that only 4 percent of all cars that are rented in this country in any given year, 4 percent, are ever involved in any accidents of any type whatsoever. That comes out of the Auto Rental News which is the industry publication.

Mr. COX. The 95 percent figure, and depending on whether we are talking about the States generally, a specific State or the Federal system, the numbers tend to range between 93 percent and 98 per cent of cases filed compared to those that even have a single day of trial. And because the norm is that these lawsuits are settled and they are not tried, what we are talking about is not so much an ultimate application of the law to the facts, which is what a judge and a jury will do, but rather we are talking about negotiations between parties that are suing each other and settlement decisions that are reached on the basis of minimizing the transaction costs. Both parties in a settlement believe they are innocent, and therefore the moneys that are paid in settlement tend to be the discounted present value of what it would take you to finally get your day before Judge Wapner and apply the law to the facts.

If we don't draft this properly, and if it is loosely drafted, and a clever lawyer can write a complaint to get around summary judgment or get around judgment on the pleadings, then we will have done nothing, because in 95 percent of the cases, you can still make the claim even though the statute is meant to prevent it from happening, and get held up for ransom, and because vicarious liability relieves, as the chairman said, deep pockets liability, it is an opportunity for somebody to put a company in a position where they recognize if they don't pay, in the end it is not profitable, so they pay the ransom on the high seas.

Mr. MIDDLETON. May I make one comment to that?

Mr. COX. Sure.

Mr. MIDDLETON. With regards to the actual cost, even in those negotiated settlements with regards to rental car companies, those are paid out of only two different possible places: one, a deductible that is paid for by the rental car company; and two, out of the insurance proceeds which they contract for in the private market. So the limits, it is not unlimited liability. The limits are whatever the coverage is that they buy. And second, when you look at that cost of that insurance spread out over the literally tens of millions of cars that are rented every year is so microscopic that the impact upon interstate commerce is—if it is not microscopic, it is so negligible that the intrusion on States rights simply shouldn't be allowed to take place.

Mr. WAGNER. Congressman, if I might react to that and your comments as well. First of all, I agree with your comments that you are right, it is the issue of settlement and threat of lawsuits,

so the clarity of the law is as I think tantamount to what we are trying to achieve here.

On the issue of insurance and deductibles, that is absolutely not the case. The rental car companies are not limited to their deductible. They are not limited to what they pay for a policy. In fact, many rental car companies cannot find insurance coverage for these types of liabilities, and as everybody, I think, understands that ultimately insurance premiums reflect the claims that are paid and so—and many of the companies are self-insured. I can assure you that Ms. Faulkner did not have potentially—depending upon how the case was resolved, may not have had the insurance to cover the ultimate claim.

Finally, the issue of only 4 percent or some small percent, just a minuscule number we keep hearing about, the issue there is the accident-free renters and the innocent car owner subsidizing the accident-prone renter or the accident-prone driver that runs into the rental car. And there is just something fundamentally wrong.

Mr. COX. I think most of us in Congress understand this innately. If it costs \$100 to rent a car, but it costs \$100,000 to pay a settlement if there is a lawsuit about the rental of the car, then the ratio is as 100 to 1, and 1 percent would be enough to wipe out your entire profit.

Mr. WAGNER. This industry has a very thin profit margin. We talk about \$14 billion, but if you study those reports that were filed with the SEC, you would see that there is a very thin profit margin. I can draw some analogies with other industries, but in the interest of time I won't, unless asked.

Ms. FAULKNER. Also, I am a contributor to Auto Rental News, our only industry magazine, and I have been in the industry for 30 years in the year 2000. That is how long I have been doing rental car. I have read the articles that have been, I feel, misquoted here, especially \$14.6 billion profit with \$100 million in. If you noticed, he said collision. That article was attempting to get car rental companies to collect collision damages and encourage them to have good safe controls of the counter. It did not include liability cases. There is a difference. We collect X amount in collision damages, but it did not say how much money we have lost on vicarious liability claims or even liability claims themselves.

Mr. COX. Collision is just the amount necessarily to repair a car.

Ms. FAULKNER. Repair to our car. It was not for damages to people. As much as he might state it is minuscule and it is only New York, it wasn't minuscule to me, and it wasn't minuscule to all of my friends in the industry that I have seen go away.

Mr. COX. Mr. Chairman, I certainly appreciate your focusing this hearing on this subject, and I think it is vital for us to try and restore the law to the principle of holding people responsible for their own acts, because people who are responsible are in a position to remedy these problems and prevent them from happening in the first place. Probably the most telling discussion we have had here this morning is the question of what could the company do, the rental car company do, to prevent the kind of accident that was discussed, and the answer agreed all around is nothing, and as long as that is the case, it is literally immoral to hold people who are not responsible liable for damages caused by someone else.

Mr. OXLEY. I thank the gentleman. The gentleman's time has expired.

The gentleman from Michigan is recently back.

Mr. STUPAK. Thank you, Mr. Chairman.

I wish the legislation was a little more reasonable. If this vicarious liability is so horrible, how come other industries aren't in here asking for us to repeal it? All we have heard from is the car rental industry.

Mr. WAGNER. Congressman, I believe that when the statement is made that this single-issue, single-industry legislation—that that is a statement that has been painted with a broad brush—

Mr. STUPAK. Where are the other industries from New York that want us to repeal vicarious liability if it is so bad?

Mr. WAGNER. Congressman, you don't see this law applied to tuxedo rentals. You don't see this applied—

Mr. STUPAK. Taxis, buses, airplanes, trains, they are all transportation much like you guys.

Mr. WAGNER. I don't think you see the issue of vicarious liability applied to those industries.

Mr. STUPAK. If the trial lawyers are so wonderful and always wanting to go to vicarious States to get these big verdicts you guys claim, then I would think they would attach it to more than just rental cars. It would be other industries.

Mr. WAGNER. I believe that it is not—it does not apply to other industries in the interstate—stream of interstate commerce. The issue of vicarious liability typically applies in situations where there is an agency relationship, master-servant relationship. We don't have that here or hazardous materials.

Mr. STUPAK. Didn't you say it didn't apply to other products in the interstate commerce; you are only saying it applies to taxis—excuse me, rental cars?

Mr. WAGNER. I do not believe that it applies to taxis, and I would have to check and certainly check with each State's laws.

Ms. FAULKNER. New York State, it only applies to motor vehicles.

Mr. STUPAK. Do you have to carry vicarious liability on your own car?

Ms. FAULKNER. You can't carry vicarious. It is unlimited. How can I insure for something that is not limited?

Mr. WAGNER. If Ms. Faulkner would loan her personal vehicle to her neighbor, and the neighbor goes out and loans it to their kid that was unauthorized, takes his friend out and they get intoxicated and damage it, Ms. Faulkner would not be accountable for that situation unless there was some sort of negligent entrustment.

Mr. STUPAK. Can rental car companies buy insurance coverage for vicarious liability?

Ms. FAULKNER. No. How do you insure something that is unlimited?

Mr. STUPAK. It is unlimited by the amount of damages awarded by a jury, right?

Ms. FAULKNER. But it is unlimited. You are still asking me to go to an insurance company and ask for—

Mr. STUPAK. It is limited to the damages, right. I have home insurance, and something happens to my home—

Ms. FAULKNER. What if it is \$15 million?

Mr. STUPAK. What if it is \$15 million? I have as much insurance as I can provide, and I am in trouble if I did something so egregious that it would cost \$15 million.

Ms. FAULKNER. If I was responsible for what happened, I agree, but if I am not responsible—

Mr. STUPAK. You mentioned this accident where this person took the car, loaned it to their son, went to New York City, came back, brought the car back, and there was this enormous amount of money awarded against you for this accident, right?

Ms. FAULKNER. I don't know what the amount was. It was closed, which happens.

Mr. STUPAK. Pardon? It was closed?

Ms. FAULKNER. The award was not—I was not told.

Mr. STUPAK. It might have been a dollar?

Ms. FAULKNER. I have sold my company.

Mr. STUPAK. It might have been \$100 million?

Ms. FAULKNER. It absolutely could have been.

Mr. STUPAK. Was there any damage to the rental car?

Ms. FAULKNER. None whatsoever.

Mr. STUPAK. So I doubt if it is a real serious accident with millions of dollars?

Ms. FAULKNER. It could be.

Mr. STUPAK. Then again, it could be \$1.

Ms. FAULKNER. I can also tell you that—

Mr. STUPAK. Could be \$1, right?

Ms. FAULKNER. You could also let me finish. It could be \$1. It could be \$5 million.

Mr. STUPAK. So you really don't know the extent of vicarious liability on that accident?

Ms. FAULKNER. And the reason why I don't know is because if you do advertise the amounts that the trial lawyers are obtaining, it only gives people the opportunity to do that again and again and again.

Mr. STUPAK. You live in Albany, the State capital of New York. Did you go and ask them to change their laws?

Ms. FAULKNER. Yes, I did.

Mr. STUPAK. Did you ask them to put caps on damages in lawsuits?

Ms. FAULKNER. I have.

Mr. STUPAK. They rejected that?

Ms. FAULKNER. We have not been able to pass any legislation.

Mr. STUPAK. So then why should the U.S. Congress—if the New York Legislature doesn't want to do it, why should the U.S. Congress then bail you out?

Ms. FAULKNER. I know you feel it is repetitive, but I am coming here because I now currently work for a nationwide company. That nationwide company is in New York, but it is in all other States, and it is costing them amounts of money that they must spread out those lawsuits—

Mr. STUPAK. If we pass this, how much will my rental car premium go down?

Ms. FAULKNER. I can't tell you how much it will go down, but it will bring competition back, and competition is always good, and it always helps prices for the consumer.

Mr. STUPAK. If we pass this, we won't get a break, but at least we get more competition?

Ms. FAULKNER. You will probably get a break because you have increased competition. You can't deny that whenever there is more competition, prices do tend to go down. That is a simple concept.

Mr. OXLEY. The gentleman's time has expired.

The gentleman from Illinois Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman.

I would like to know—I know opening statements were submitted for the record, but I also want to add to that to welcome Mr. Wagner, who is from the St. Louis metropolitan area. Of course, my district is across the river. We are all part of that big family, the St. Louis metropolitan region. When you live on the borderline, obviously you understand the importance of interstate commerce. I would really like to thank the whole panel, because I think we as Americans—I think there is some pretty hard lines being drawn here. I think everybody accepts that an injured party should have access for redress through the court systems, and the problem is who is at fault and how do you get compensation for negligence, I think.

I am not a lawyer. I don't even play one in another life. I really have no desire to be one. But I think we respect the court system, and the debate here is who is being held liable for injuring another citizen. And I do think the interstate commerce aspect comes in because in the St. Louis metropolitan area, there are people renting vehicles at Lambert, St. Louis airport, and driving over to see John Shimkus 30 minutes from the airport, and coming across State lines.

So I appreciate this debate. I really appreciate this issue, and hopefully there is some movement to some common sense instead of the heated rhetoric that we are hearing.

Just a couple of questions. First one for Mr. Wagner. Is there any way for a company, even one in a State without the vicarious liability, to protect itself from the unlimited damages that it might be exposed to because this peculiar legal theory? It is really kind of—really—my colleague and friend Bart Stupak kind of asked that question. I am asking it again. Is there a way for rental companies to protect themselves in this arena?

Mr. WAGNER. Congressman, I think at the end of the day the answer would have to be no, other than simply to go out of business. There are steps that could be taken in the interim. However, certainly—and Mr. Middleton outlined during his testimony some of the steps that we take in terms of checking for drivers' licenses, asking for insurance coverage, checking drivers' records in certain situations. And we had a discussion of insurance, whether we could simply insure for these losses. But even with insurance, if you will find a company that will ultimately underwrite the full extent of vicarious liability, the premiums are going to be oftentimes prohibitive, and ultimately the premiums charged are going to catch up and reflect the claims that have been covered through settlement or through judgment. So at the end of the day, the only sure way to protect yourself against vicarious liability claims is to simply go out of business.

We can tell renters that you are not allowed to take this car into the other State. We can rent them smaller cars to limit our exposure of the passengers, the number of passengers that a car might have, but when they violate the rental agreement, and they travel across State borders, and they cause harm or they are harmed by a third party, the only way to—there is no other way to ensure against that or to ensure that vicarious liability will not reach that rental company.

Mr. SHIMKUS. Let me go to Ms. Faulkner, and, Mr. Middleton, I will give you a chance to respond.

If this legislation had been enacted 3 years ago, might you have been able to stay in business?

Ms. FAULKNER. I absolutely would still be in business today, and so would all my family and friends that worked with me.

Mr. SHIMKUS. Is a car rental company permitted under New York law to require your renters to purchase liability insurance if they do not have their own personal car insurance?

Ms. FAULKNER. Are they required to—

Mr. SHIMKUS. If they don't have personal liability protection based on their own policy, they are renting the car, they don't own a car, obviously New York a lot of people probably don't have cars in the city, are they required to buy insurance as they rent a car?

Ms. FAULKNER. No, it is an option available to them, but it is not required. We are required to rent to them with or without insurance.

Mr. SHIMKUS. Let me then follow up. Mr. Middleton, you heard Mr. Wagner's statement there is nothing a rental car company can do to prevent itself from liability. Do you agree or disagree with that?

Mr. MIDDLETON. I disagree. One, they can go to the State legislatures that have implemented these vicarious liability statutes. They could ask for the very type of coverage to be implemented in a situation where the renter—excuse me, the person renting the car did not, in fact, have insurance. I have heard no evidence that that has been attempted. That is where it should be in the States.

And with regards to this idea to the question of whether premiums would go down, the only statistics that this committee has had today are the statistics that we have provided. The statistics from 1996, a year in which Florida allowed vicarious liability claims and California, the most populous State, had controls on vicarious liability claims, reveals that even with vicarious liability claims, the per day rental rate in Florida for all companies was more than \$4 a day cheaper than it was in a State that had controls. It is—to suggest that those limits are going to go down—

Mr. SHIMKUS. I appreciate your response.

Mr. OXLEY. The gentleman's time has expired, but go ahead, one more.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Do you take the position that this has no interstate commerce aspect to it?

Mr. MIDDLETON. I take the position that the impact on interstate commerce—

Mr. SHIMKUS. The question is—that is not the question. The question is is this the purview of interstate commerce; is renting

cars that go across State lines, is that the purview of interstate commerce under the interstate commerce clause?

Mr. MIDDLETON. Not when there is no provable impact.

Mr. SHIMKUS. Your answer is no. Thank you.

Mr. OXLEY. The gentleman's time has expired.

The gentleman from Minnesota Mr. Luther.

Mr. LUTHER. Thank you, Mr. Chairman.

Mr. Wagner, just a couple of questions to make sure I understand this. Now, in those five States that we are referring to here, could a customer that is renting a car come up and waive all insurance? If there was no vicarious liability, or let's say this bill passed, then could the customer still waive insurance and therefore not provide any coverage in the event that the vehicle would then go out and hit someone?

Mr. WAGNER. Congressman, if I understand your question correctly, I would have to answer no. There is no way that ultimately the customer could waive all insurance if this bill would pass. Every State in the country save one, and I am not entirely sure if I—it may be Mississippi or Alabama, one of those two States—has in place financial responsibility laws; requires minimum amounts of coverage that all car owners are required to have and maintain a vehicle. And so when a customer comes in, if they own their own car, they are likely going to be carrying financial responsibility on that vehicle, and the rental car company itself will be carrying financial responsibility, so that the injured party out there will ultimately be able to claim against the driver, the renter's insurance or ultimately against the rental car company's minimum financial responsibility. So they cannot waive that.

Mr. LUTHER. I am curious, though, because it seems to me by just initialing places in the form, you can waive all of this insurance. And let's say that you applied, and you didn't have a car of your own. You might have a driver's license, but you don't have a car of your own, so you have no insurance. Or let's say that you have a car, but you are one of those people who just doesn't insure. That is a big problem in our country is uninsured motorists. Now, would it be possible for that person—

Mr. WAGNER. What you are speaking to—and you are right, I did not address this directly—are the products that are offered by a rental car company, oftentimes referred to as supplemental liability coverage, supplemental liability products, accident insurance, personal injury-type insurance. Those are products that are provided often by a rental car company, which frankly we haven't mentioned much about today. That is a precautionist, a safety measure or an opportunity that is offered to each rental customer that they can come in and for a fee buy insurance to cover their liability. But if they choose to decline that and waive it, and they sign the appropriate lines where they knowingly decline that, still the State financial responsibility laws that I mentioned apply. If the renter has insurance on his own vehicle—

Mr. LUTHER. Let's say now there is no—

Mr. WAGNER. They have no vehicle, then the rental car company itself is required in all but, as I said, one of those—one State to cover the vehicle itself, so that the injured party—and that is a public policy that has been established in States across the coun-

try, that the injured party is always going to have some opportunity to recover at least the State financial responsibility minimums that are imposed by law. And that is the context in which these issues are dealt with in State insurance codes. Vicarious liability is unrelated to insurance coverage.

Mr. LUTHER. Of course, a lot of those coverage limits are very low. They are very inadequate. Today I think many of those State limits are extremely inadequate compared to what the real cost is if a person is injured.

Did you have a response? Mr. Middleton, you wanted to comment.

Mr. MIDDLETON. Only with regards to these supplemental coverages. It is very important for everyone to know that the supplemental coverages offered by the car rental industry are peddled with great zeal and that, in fact, they represent—there is a 70 percent margin on all the supplemental coverages. In fact, Alamo has 23 percent of their total revenues are derived from these supplemental insurance products that they try to push upon the customer. So there are a lot of these supplemental coverages that are actually, in fact, being purchased and which go to help compensate the innocent people who are injured.

Mr. WAGNER. Mr. Congressman, may I just—I don't think we are here to debate the merits of supplemental liability coverage, but I will tell you that typically in the industry practice—and you can certainly check with the Auto Rental News—is when a liability policy is covered, offered, it provides coverage for that injured party, the driver who may be the renter or an independent third party, up to \$1 million, from zero to \$1 million, and for a fee of maybe \$9, \$10, \$8. That is a product that may have value for which only a small percentage of the customers take.

Mr. LUTHER. My final question, if I could just ask, is if we would pass Federal legislation, would it make sense to at least then provide some minimum threshold out there, recognizing that there are all these State statutes that are probably in most people's views here on the committee very inadequate in terms of compensating a truly injured person? Should we then also have kind of a minimum standard as to what this coverage ought to be?

Mr. WAGNER. If you are asking me, we have heard a couple of suggestions for language adjustments, and I think that all of those, including your suggestion, are worthy of consideration. But I will also add as a footnote that precisely the type of matter that is considered in the State capitals are the dollar limits, and we see every year legislative efforts and success to raise those minimum financial responsibilities.

Mr. LUTHER. Mr. Chairman, not to belabor this, but I served in the State capital for 20 years, and I can tell you how difficult it is to get those raised and the lobbying that goes on. I think most of them in this country are very inadequate for the real cost today to a family that is injured. And that is—our concern here has to be looking out for those consumers.

Mr. WAGNER. I understand. I think we are saying the same thing with respect to us going to the State capitals and trying to address vicarious liability.

Mr. LUTHER. Thank you very much.

Mr. SHADEGG [presiding]. I would recognize myself next. I thank the chairman for putting me in the Chair to do this. I just want to begin. My time is very short.

Mr. Middleton, I want to begin by nailing down two questions that I think Mr. Shimkus got you to answer, but I want to be sure you answered. First, I believe you acknowledge in your view there is no effect on interstate commerce?

Mr. MIDDLETON. None that has been proven.

Mr. SHADEGG. None.

Mr. MIDDLETON. None that has been proven.

Mr. SHADEGG. Proven. I like the lawyer's word. I am a recovering lawyer myself.

And you say that there are no effects on rates, there is no cost to this?

Mr. MIDDLETON. None that has been shown.

Mr. SHADEGG. This is just a comment. I am puzzled as to why ATLA is in here to the wall fighting this if there is no cost here. It is a little difficult for me to understand.

I am out of time. I need to move into my 5 minutes. I will let you to respond to that later if you would like.

Have you read this bill?

Mr. MIDDLETON. Yes, I have read it.

Mr. SHADEGG. Have you read the operative section of the bill on page 7?

Mr. MIDDLETON. I don't have a copy of the bill with me here today.

Mr. SHADEGG. If you turn to page 7 and you look at lines 13 through 18, that is the operative section of this bill. That is where we go at and address the law of vicarious liability. And actually I think the key words are on line 17 and 18—actually the key words are really on line 17, and it says—basically says you cannot be held liable, and there are four words, "solely by reason of" being owner of the car.

So ATLA's position here today is acknowledging that the current law makes someone liable and makes them pay damages just because they own the car. That is what we are doing to the rental car companies. They simply own the car; therefore, they are liable. You believe that to be a reasonable stand?

Mr. MIDDLETON. I believe it to be reasonable in this context, Mr. Congressman: It is reasonable if the State legislatures have looked at this—let me finish, please.

Mr. SHADEGG. Your State legislature argument deals solely with interstate commerce, and you are simply wrong about that. Let's not deal with that. If you have a defense other than that, you can give me the defense other than that.

Mr. MIDDLETON. The defense is that the reason vicarious laws are in place is because it has been determined that if a company is dealing in a marketplace and is having a potential impact upon the risks that are raised for those citizens, then—that is the background and the importance of vicarious liability—is that those people as a result of the agency relationship, then those people should maintain a certain level of responsibility. They are making money of the system—

Mr. SHADEGG. I am afraid I have got to move on. First of all, I think you are wrong about the theory underlying vicarious liability. The reality is there was a time in America when there was no social infrastructure network, when somebody who might be injured by somebody that was without any resources might not have been compensated at all. That era is gone. What I want to talk about is you say in that context ATLA believes passionately—because I have been working with ATLA—that HMO immunity under ERISA is immoral, that it is wrong, that in no circumstances should we allow a health care company in America governed by ERISA to injure or kill someone and walk away and say, hey, too bad. That flies in the face of the philosophy of my party, and I think the philosophy of this Nation, which is individual responsibility. ATLA says it is immoral and that HMOs are out there killing people today.

The example I used is Mrs. Corkrum's baby, whom United Health Care killed and walked away and said, too bad, Mrs. Corkrum, too bad, Mr. Corkrum, you recover nothing. ATLA says that is wrong, but you turn the flip side of absolute immunity given to the HMOs under ERISA, as interpreted by the United States Supreme Court, you turn that around, the other extreme is vicarious liability, which is strict liability for doing nothing wrong.

I don't understand how you can come in here on the one hand and say ERISA is completely wrong because it allows HMOs to kill people and walk away and not be accountable, and then you turn around and come back to the same Congress and say, but another law that says we can hold innocent parties, in this case a rental car company that did nothing, absolutely nothing, wrong, we want to be able to hold them liable for something they did that—for nothing they did. They are an innocent bystander.

I just can't even imagine that you can take that hypocritical stand, and I will tell you I am fighting to the wall on the ERISA issue to try to get the business community to wake up and say you cannot continue to defend a policy which says that HMO health care companies can kill people and maim people and walk away and just say, too bad, there is no recovery, the Congress granted absolute immunity, and then turn around and come in here and say, Avis or Hertz or Budget or whoever you are, you did nothing wrong, but you own this car.

Remember, go back to the language of the bill. Solely by reason of being an owner. This isn't a question about their negligence in renting the car. If you guys came in here and said if they are negligent in renting the car, if they rented to a drunk, if they rented to a multiple-convicted reckless driver, they ought to held liable, you damn bet. I will be on your side of that fight. But I tell you this is a serious mistake on your part, which I believe is indefensible.

Mr. MIDDLETON. May I respond?

Mr. SHADEGG. Sure.

Mr. MIDDLETON. The difference between HMOs—and I have great respect for your stand on the HMO issue, but the difference between ERISA preemption with regard to HMOs and what we are dealing with here is there is nobody in any State—we are talking about tens of millions of people, as the Congressman is aware, who

have been impacted by the ERISA preemption. Here we are talking about what essentially five State legislatures have seen fit to do based on other policies which are intertwined with their own State-regulated insurance statutes and which for their peculiar reasons they seem to feel is necessary to maintain. The impact, rather than on all 50 States and the District with the ERISA, is here we only have a tenth of the jurisdictions involved at all.

Mr. SHADEGG. So ATLA is okay to defend an immoral policy because some State legislature they've been able to successfully win that argument in already.

Mr. MIDDLETON. I think it is a matter of the State legislature.

Mr. SHADEGG. It is not immoral to hold me accountable for doing nothing wrong, to make me pay millions of dollars in damages when I have done nothing wrong? If you don't think that is immoral, here's the bill I am going to introduce: A bill that says for anyone injured by an accident in which a rental car company rented a car to someone, and that someone negligently entrusted the car to someone else who killed someone, therefore the rental company was not liable for that, recovery may be had against a class consisting of all trial lawyers in America. It is as logical to hold all trial lawyers in America liable to pay the damages to that person innocently injured as it is to hold the rental car company liable, isn't it?

Mr. MIDDLETON. No. And I am glad you are a recovering lawyer, Congressman.

Mr. SHADEGG. My time has expired.

The Chair recognizes Mr. Deutsch.

Mr. DEUTSCH. Thank you, Mr. Shadegg. I always kind of enjoy these hearings for a couple of reasons. One, I get to hear my Republican colleagues argue in favor of Federal Government involvement sometimes, and then on the other side. The whole Patients' Bill of Rights issue that Mr. Shadegg alluded to, you know, he as well as many of his colleagues all of a sudden, even though there is ERISA in terms of pension issues, which they don't want to touch, now it is not a States right issue. Whenever we start talking about States rights issues, I am consistently reminded that consistency is the hobgoblin of small minds. I do think, though, that Mr. Shadegg—

Mr. SHADEGG. Those small minds of the trial lawyers then.

Mr. DEUTSCH. It includes yours, though, when you talk about what you just talked about in terms of the HMOs. Let me just mention this in specific, that I think Mr. Shadegg did get to a point which I think needs to be clarified, the whole issue of fault. You know, fault is not the only thing that we put liability on in the judicial system, and, Mr. Shadegg, there is a vast majority of States that have no-fault automobile insurance, no-fault automobile insurance. Now, if you want to describe no-fault automobile insurance as immoral, that is your entitlement to do, but I think—again, I don't know the exact number of States that have no-fault insurance, but there is a large number of States that have it for some excellent policy reasons, some excellent policy reasons in terms of reducing unnecessary litigation and reducing consumer costs of insurance sufficiency, best ability to pay, all sorts of reasons.

So I think, you know, we need to go beyond just fault. I think something does bother us, though, about saying companies should be vicariously liable when there is, in quotes, no fault.

I think Mr. Middleton, at least in some of your testimony, is really getting at the heart of this. I had the honor and distinction of serving as chairman of my State insurance committee when I was in the State legislature, and I at least tried to use policy issues. I think what you alluded to in your testimony a little bit is what legislatures could be going through. Let me emphasize could be going through on the policy side of why to implement this; that, I think, if this committee is doing our job, we really should be looking at—to some extent to really be looking at the policy side, that, in fact, do these types of legislation end up really creating a better policy outcome, I mean, really testing, creating less risk. There are policy reasons for it.

And Mr. Wagner, I think, responded a little bit trying to say that, well, you know, we would be doing these checks of drivers' records and things like that anyway.

Mr. Middleton, I want to give you the opportunity to really try to elaborate on that, just in terms of from a policy perspective, taking away—and I think that is really what bothers me, that we acknowledge that there isn't fault, but if you can kind of maybe elaborate why in this setting, even though there is not fault from a policy perspective, it would make good public policy to do that.

Mr. MIDDLETON. Well, it stands to reason that if you put more and more cars on the road in any particular State regardless of what the vicarious liability statute is, is that you are going to have a situation where you have more likelihood of having collisions or accidents.

What the underlying policy of vicarious liability is, whether anybody wants to admit it or not, is that the relationship is twofold. It is a relationship of the rental car company in this context to the person renting the car and who is in the best position to control that risk, and also how that impacts the other citizens of each particular State. You put more people on the road; you don't increase the number of uninsured motorists, but there is a greater likelihood created that the uninsured motorists are going to be involved in a collision.

Who is in a position to compensate the person who is absolutely innocent? Who is the person who gets collided with or run over as a pedestrian? The company has decided, made a marketing decision, to come in and utilize a system in that State. They know what the law is of vicarious liability. They say, you know what, in spite of this, we can make money off of this. They come in, they increase the road usage. They decrease, as a result of that, with the millions of cars on the roads, the—they increase the likelihood of collisions and harm done to people. Then our society, through our State legislatures, has decided that in certain States, based on what they see as important, they are going to impose that cost upon the company that is doing the marketing and doing the business in that State.

Mr. DEUTSCH. Mr. Wagner, if you could maybe respond in a sense, and this is really sort of follow-up to Mr. Shimkus's questions or comments, is there any way of dealing with the problems

that Mr. Middleton just addressed without completely repealing vicarious liability through legislation like this? Is there any way of dealing with it differently than this? Is it, in fact, an either/or, these are the options?

Mr. WAGNER. Congressman, I don't know that it is a black and white, either/or situation. Certainly the problems that Mr. Middleton addressed, the number of cars on the road, you know, there may be more cars on the road than 10 years ago, 15 years ago. Certainly cars tend to be safe for now, and they tend to wear longer, so I think you see manufacturers addressing issues related to more cars on the road.

The issue of—that he talked about about these people exercised a marketing judgment to come into the State and conduct business, Ms. Faulkner happened to be in New York when she started her business. She may have been born or raised there. I work for Enterprise Rent-A-Car. I was born and raised there. I think that people have a right to establish a business in the State that they are in without having to move out of the State. I think Ms. Faulkner has talked from time to time of actually leaving the State of New York.

So you can say, sure, you exercised marketing judgment or decision to come into the State and open up a business, but I think that that is skirting the fundamental issue here that we are talking about about fault notwithstanding, the discussion of no-fault insurance, the relationship between the rental car company and the customer, that is not the same as an employer-employee, a master-servant. What you have here is a rental car company that receives a potential customer, has about 2 or 3 or 4 or 5, 10 minutes, whatever time is taken to look at that person, check to see if they have got a valid license, check to see if they carry insurance, size them up, have them fill out the contract, see if they are going to agree to the terms of the contract, sign up the other authorized drivers that are going to be using the car, and then off they go. It is not—we are not the ultimate insurer. We do not hold ourselves out to be in the insurance business in the sense of underwriting any damages that ultimately result from their giving the car to a neighbor, an unauthorized driver and ultimately going on.

So there are a lot of responses to the things that we have heard back and forth here and the comments that Congressman Shimkus made and Congressman Luther made in terms of are there some areas in the middle. There may be.

Mr. DEUTSCH. Thank you.

Mr. SHADEGG. The time of the gentleman has expired. The Chair would recognize the gentleman from Tennessee Mr. Bryant.

Mr. BRYANT. Thank you, Mr. Chairman. I am always amazed when I hear, and I think unfairly, this debate that the Republicans are always for States rights, and we are so hypocritical when we want to bring something to the Federal level. That is an unfair argument. I see so many times my colleagues on the other side who we believe want to Federalize everything, but yet when we bring up States rights, they argue no, big government has a role in this, and just seeing the delight and throwing it up in our face that we are the only ones that are hypocritical.

I think no party has a monopoly on hypocrisy up here. I think Mr. Frank has it right when he says the parties agree with the level of government that agrees with them. We think the level of government that agrees with us ought to be the one to control it. Let's put aside that argument of hypocrisy.

And, Mr. Middleton, I know you represent the trial lawyers. I was a civil defense lawyer. And believe me, if you guys didn't file lawsuits, I wouldn't have any work to do. So I come from that system, and I understand the need for people to be able to sue fairly to collect damages, but I sincerely believe in sponsoring this bill that this is unfair. I have listened to your arguments. I have read other statements about it, and I simply disagree. The no-fault system was set up in some States to facilitate the adjustment of claims as much as possible, bypass trial lawyers, find those people that are truly injured, and get the money to them as quickly as possible through a no-fault system. Whether that has accomplished that or not, whether that is beneficial where the plaintiff actually gets more money quicker out of it than having to go through a long, drawn-out lawsuit, I don't know. We are not here to judge the no-fault, but that is why that system is in place.

I look at all these examples that I brought out about where a car company, a truck rental company is held liable simply because they rent a perfectly good truck, not defective, to a perfectly competent driver, not intoxicated, not in any other way impaired, and somehow this person goes out and has a wreck, and they are held at fault. The individual who rented the car should have had insurance that the injured plaintiff could have gone against. If that person was uninsured, the injured party most likely had some sort of uninsured coverage in their own policy or underinsured coverage. So it is not as if the injured plaintiff goes wanting for some source of money. But yet these five States and DC have come in and said, well, we are going to overlook the fact of liability insurance possibly that the driver had, we are going to overlook the fact that the plaintiff could have uninsured insurance, and we are going to look for the deep pocket. We are going to look for the big company out there. Everybody knows they make a lot of money.

Again, I just don't accept as valid your overall societal argument that big companies, when they come into a market, ought to be responsible for damages even though there is absolutely no fault there.

Also, the issue of comparison of rates. I am not sure, and maybe you believe you are right on this, but when you compare Florida rates of rental cars to what cars rent for out in California, I am not sure we are talking apples and apples. Maybe we are talking apples and oranges, because the tort system in Florida, the State tort system in Florida, is certainly different than the State tort system in California. California, I think, probably has consistently higher verdicts out there that are factored in, in normal plaintiff/defendant lawsuits, that are factored into the car companies. Certainly their cost of doing business, the taxes they pay in the State and all these other issues are factored into what they rent a car for every day. So simply to say, well, you can rent a car cheaper in Florida than you can in California, so therefore this whole argument that the car companies make that vicarious liability costs

them money is a bogus argument, I don't think that is true. I think, again, there are a lot of costs that go into how much those cars rent for other than the fact that the cars can be held—the companies can be held vicariously liable.

I wonder, too, Ms. Faulkner, you were in business in New York. Does New York State—does the New York State Legislature require a person renting a car to have insurance?

Ms. FAULKNER. No.

Mr. BRYANT. They don't mandate that you must have insurance before you rent a car?

Ms. FAULKNER. No. As a matter of fact, we can't discriminate against someone that doesn't have insurance.

Mr. BRYANT. And I say this halfway joking, Mr. Middleton. I don't think this is possible, but do you think it would solve our problem if after the company went through the checklist and made sure they had a perfectly good working car, not defective, and a competent driver, that perhaps they would send a Hertz employee along with that rental car? Would that solve a problem?

Mr. MIDDLETON. No. I think one way to address this would be to require proof of other insurance if you are not going to subscribe to the optional coverages. But let me just—

Mr. BRYANT. You are saying the States don't—at least in New York didn't require insurance?

Mr. MIDDLETON. That is why they have this vicarious liability. That accentuates the situation that I said that you can't simply look at this one statute. You have to look at how those particular State legislatures that allow vicarious liability have interwoven it with their other insurance regulations that they have implemented, because the reason they—I assume. I am not from New York. You can't tell from my accent, I know. I am your neighbor in Georgia. But with regards to what the legislature has decided, since they can't mandate that they show proof of insurance, then their legislature has decided that vicarious liability, I can only assume by looking at it because it dovetails perfectly, should be kept in place.

But there is one other thing I would like to mention. That is, with regards to the Florida rates, those rates were based on 1996 figures at a time when Florida had complete vicarious liability, and California had caps on vicarious liability and applied only to base rates.

Mr. BRYANT. You think that is the only factor that these companies take into consideration when they set their costs?

Mr. MIDDLETON. No, I don't. I think what we ought to do—

Mr. BRYANT. You think Florida—the cost of business is as expensive in Florida as it is in California?

Mr. MIDDLETON. I imagine it is.

The other problem with the rental car industry in Florida is they rent to a greater percentage of foreign nationals, rent vehicles to a greater percent of foreign nationals than any other State in the Union, and who but the rental car companies should be held responsible for the marketing decision to rent to those people when those people leave the country and you can't attach any insurance that they have or any other assets they have for harm that they may cover?

So you have to look at all of these reasons in a particular State. That is why we say it should really be left to the States. We think that they have given an analysis to this that—I have a great belief that Congress is really charged with doing very noble things. I have great respect for this body that I sit before today. And I don't see where if you only have 10 percent of the States that have implemented a certain statutory relief, that you should—that Congress should engage in something like that when we don't have the statistics before us.

I would love to see the statistics broken down on actual vicarious liability costs, and we don't have those, so the only thing that we can rely upon is the extrapolation total revenues, total amounts paid in collision costs and the fact that no SEC disclosures have revealed any concern whatsoever for any of these large car companies, rental companies, of any problems with liability coverage.

Mr. BRYANT. I appreciate the extended remarks you have given. I think, again, the companies are here in Washington asking for relief, for whatever reason, that is not—they can't get that in these individual States. I have my own theory on why trial lawyers are so successful in the States, as they are, I might add, very effective, probably the most effective lobby in Washington, DC, from what I can tell.

But I think it boils down to an issue of fairness in terms of fault. I think our system inherently, and should be inherently, a fault-based system. I think there are some rare exceptions out there. Again, I made my living because you guys file lawsuits, but I think there is some balance here, and I agree with Mr. Shadegg, I think this one goes a little too far, and I am certainly willing to risk my old law firm's cases that we had defending what few they might have been in this particular instance to take that position. I guess it is just one of those issues I think good people can simply disagree on. I thank you.

Mr. MIDDLETON. I appreciate your comments.

Mr. SHADEGG. I thank the gentleman.

The time of the gentleman has long since expired, but he is the sponsor of this legislation. I want to thank all the witnesses for your thoughtful testimony. There are probably some gray areas here. We appreciate your help. The committee is adjourned.

[Whereupon, at 11:50 p.m., the subcommittee was adjourned.]



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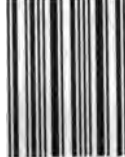


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